

# **EXHIBIT 1**

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

|   |   |                     |
|---|---|---------------------|
| In the Matter of                        | ) |                     |
|   | ) |                     |
| Choice Communications LLC               | ) |                     |
|   | ) | CC Docket No. 96-45 |
| Petition for Designation as an Eligible | ) |                     |
| Telecommunications Carrier in the       | ) |                     |
| United States Virgin Islands            | ) |                     |

**DECLARATION OF DONALD E. PARRISH  
ON BEHALF OF INNOVATIVE TELEPHONE**

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Washington, DC 20006  
(202) 719-7000

February 23, 2005

Attorneys for Innovative Telephone Corp.

1     **I.     Introduction**

2     Q.     What is your name and business address?

3     A.     My name is Donald E. Parrish. I am a principal in the consulting firm of Parrish,  
4     Blessing & Associates, Inc. My business address is 1142 King Street, Christiansted, U.S. Virgin  
5     Islands 00820

6  
7     Q.     What is the purpose of your declaration?

8     A.     The purpose of my declaration is to summarize my attempts to inquire about the  
9     availability of wireless telephone services offering by Choice Communications, LLC (“Choice”).  
10    As detailed below, I contacted Choice on three occasions in an effort to learn more information  
11    about their wireless telecommunications service.

12  
13    Q.     What were the results of these inquiries?

14    A.     Every time, I was informed that Choice does not offer any wireless telephone service—or  
15    any telephone service at all. The only services Choice provides are paging, wireless Internet and  
16    wireless cable services.

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18    Q.     Please describe your first contact with Choice to obtain additional information regarding  
19    any wireless telecommunications services.

20    A.     On February 11, 2005, I contacted Choice’s St. Croix office and inquired about wireless  
21    telephone service. The Choice employee indicated that Choice did not offer any wireless  
22    telephone service—only paging service, wireless Internet or wireless cable. I then asked if  
23    Choice offered “any” telephone service; the Choice employee reiterated that Choice does not  
24    provide any telephone service—whether wireless or otherwise.

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Q. Please describe your second contact with Choice to obtain additional information regarding any wireless telecommunications services.

A. On February 11, 2005, I went to Choice’s St. Croix office in person and inquired about wireless telephone service. The Choice employee indicated that Choice did not offer any wireless telephone service—only paging service, wireless Internet or wireless cable. I then asked if Choice offered “any” telephone service; the Choice employee reiterated that Choice does not provide any telephone service—whether wireless or otherwise.

Q. Please describe your third contact with Choice to obtain additional information regarding any wireless telecommunications services.

A. On February 11, 2005, I contacted Choice’s St. Thomas office and inquired about wireless telephone service. The Choice employee indicated that Choice did not offer any wireless telephone service—only paging service, wireless Internet or wireless cable. I then asked if Choice offered any telephone service; the Choice employee reiterated that Choice does not provide any telephone service—whether wireless or otherwise.

Q. Does this complete your declaration?  
A. Yes it does. Thank you.

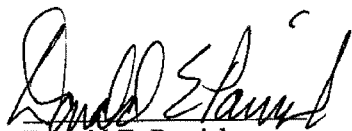
1 I declare under penalty of perjury under the laws of the United States of America that the  
2 foregoing is true and correct. Executed on the 22nd day of February, 2005 in Christiansted, U.S.  
3 Virgin Islands.

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Donald E. Parrish

# **EXHIBIT 2**

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

|   |   |                     |
|---|---|---------------------|
| In the Matter of                        | ) |                     |
|   | ) |                     |
| Choice Communications LLC               | ) |                     |
|   | ) | CC Docket No. 96-45 |
| Petition for Designation as an Eligible | ) |                     |
| Telecommunications Carrier in the       | ) |                     |
| United States Virgin Islands            | ) |                     |

**[PROPOSED] INTERROGATORIES FOR CHOICE COMMUNICATIONS LLC**

On January 13, 2005, Choice Communications LLC (“Choice”) filed a Petition for Designation as an Eligible Telecommunications Carrier in the United States Virgin Islands.<sup>1</sup> Based on the Commission’s review of Choice’s submission, we direct Choice to provide the additional information and documents specified below within twenty (20) calendar days from the date of this document.

**I. DEFINITIONS**

For the purposes of responding to the foregoing set of interrogatories:

1. “Document” or “Documents” or “Things” are used in the most comprehensive and inclusive sense and shall include any physical thing embodying or containing information or any written, recorded, graphic, or other matter, in any language, whether produced, printed, reproduced, or stored on paper, cards, tapes, disks or other computer storage devices, charts, film, or any other medium, including matter in the form of reports, records, studies, statements, minutes, books, letters, notebooks, publications, pamphlets, microfilm, circulars, prospectuses,

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<sup>1</sup> *Petition for Designation as an Eligible Telecommunications Carrier in the United States Virgin Islands* of Choice Communications LLC, CC Dkt. No. 96-45 (filed Jan. 13, 2005).

brochures, studies, notices, computer printouts, insurance policies, agreements, contracts, memoranda, summaries, compilations, appraisals, correspondence, working papers, notes, messages, emails, telegrams, tariffs, bookkeeping entries, inventories, financial statements, accounting records, balance sheets, books of account, operating statements, budgets, schedules, appointment calendars and diaries, telegrams, travel reports and records, bills of lading, invoices, freight bills, ledger sheets, receipts, projections, graphs, sketches, drawings, blueprints, photographs, motion pictures, information or files that have been electronically stored or recorded including magnetic disks, optical disks, voice mail, and samples, models, prototypes and devices and any Documents necessary to the comprehension or understanding of any designated Document (including cross-referenced Documents and indexes, definitions or keys to any terms or codes used) and also includes originals, drafts; each separate copy of each Document or Thing that, by reason of any variation or change (*e.g.*, the presence or absence of handwritten notes, or underlining), represents a distinct version; a copy of responsive Documents and Things that are electronically stored or recorded shall be produced in the same format in which they exist.

2. “Choice” means Choice Communications LLC, and includes each of its present or former, domestic and foreign parent corporations, subsidiaries, affiliates, predecessors, joint ventures, boards, departments, divisions, committees, and all directors, executives, officers, employees, consultants, agents, accountants, attorneys, investigators, and representatives of the foregoing entities.

3. “ETC” means eligible telecommunications carrier as defined by Section 214(e) of the Communications Act of 1934, as amended, 47 U.S.C. § 214(e), Part 54 of the Commission’s rules, 47 C.F.R. § 54.1 *et. seq.*, and as interpreted by the Commission’s precedent.



4. “Innovative” means the Virgin Islands Telephone Company d/b/a Innovative Telephone, the rural incumbent local exchange carrier in the U.S. Virgin Islands.

5. As used herein, the terms “all” and “any” shall be construed to include or refer to “any,” “all”, and “any and all” as necessary in order to bring within the scope of the request of all responses which might otherwise be construed to be outside the scope.

6. “Person” means any individual, partnership, firm, corporation, association, joint venture, government or other legal entity.

7. “Third Party” means any person other than Innovative or Choice.

8. “Including” or “includes” as used herein means including without limitation.

9. As used herein, “refer to” “relate to,” or “relating to” means in whole or in part constituting, containing, concerning, embodying, reflecting, discussing, describing, identifying, stating, mentioning, analyzing, evidencing, supporting, confirming, undermining, rebutting, repudiating, contradicting, referring to, dealing with, or in any way pertaining to.

10. As used herein, “evidences” or “evidencing” shall mean approving, indicating, or probative of the existence or nature of.

11. “Communication” means any form of oral or written interchange, whether in person, by telephone, telex, facsimile, or any other medium.

12. “Identify” means:

(i) when used with respect to a person:

(a) the person’s name;

(b) the person’s last known residence, business address and telephone number.

- (c) the person's company or business affiliation at the date of transaction, correspondence, or Thing referred to; and
  - (d) the persons title and duties in the company or business with which he was or is affiliated;
- (ii) when used with respect to a Document or Thing:
  - (a) the identity of each person who prepared and/or authored and/or signed it;
  - (b) the date of the Document or Thing;
  - (c) the general nature of the Document or Thing (*e.g.*, letter, memorandum, photograph, computer printout, model, etc.);
  - (d) the identity of each person to whom it was addressed or distributed;
  - (e) its present location and the identity of its present custodian;
  - (f) the nature and substance of the Document or Thing with sufficient particularity to enable it to be identified;
  - (g) additionally, if the Document is a patent, the country in which such patent was applied for, published, issued or granted, and each number, the title holder, date, the identity of each alleged inventor thereof, and the identity of any assignee;
  - (h) additionally, if the Document is a printed publication, the name of the publication in which the Document was printed, the volume number and/or issue number, and page numbers; and
  - (i) additionally, if the Document was or will be produced in response to a request for Documents, the bates numbers corresponding to each page of the Document.
- (iii) when used with respect to a Communication:
  - (a) if written, the identity of the Document or Documents in which the Communication was made, the substance of the information in the Communication, and the identity of all Documents which refer to, relate to, or reflect such Communication, in whole or in part, or which were discussed, displayed, or used during such Communication;
  - (b) if oral:

- (1) whether the Communication was made in person or by telephone;
- (2) the identity of each person who attended, heard or observed it;
- (3) the location of each such person at the time of Communication;
- (4) the substance of what each person said.

13. “Application” shall mean Choice’s Petition for Designation as an Eligible Telecommunications Carrier in the United States Virgin Islands as filed with the FCC in CC Docket No. 96-45.

14. “FCC” and “Commission” shall mean the Federal Communications Commission.

15. The term “Supported Service” shall mean the services and functionalities identified in 47 C.F.R. § 54.101(a) of the FCC’s rules.

16. The term “Telecommunications Service” shall have the definition contained in 47 U.S.C. § 153(46) of the Communications Act of 1934, as amended.

17. The term “Non-Telecommunications Service” shall mean any service provided that is not a Telecommunications Service, including but not limited to information services, as defined in 47 U.S.C. §153(20) of the Communications Act of 1934, as amended.

18. “VIPSC” shall mean the Virgin Islands Public Services Commission.

## **II. INSTRUCTIONS**

1. Responses and objections to these Interrogatories must be provided to the Commission within twenty (20) calendar days of the date of this document.

2. The following rules apply to each Interrogatory:

- (a) The singular shall include the plural and plural shall include the singular.

- (b) “And” shall include “or” and “or” shall include “and.”
- (c) If a word is capitalized, the definition provided in “Section I. Definitions” is to be used for its meaning. If a capitalized word is not defined in “Section I. Definitions,” the definition in the Communications Act of 1934, as amended, shall be used to define the terms.

3. Unless otherwise specified, each Interrogatory shall extend to all information in the possession, custody or subject to the control of, or otherwise available to Choice.

4. Interrogatories are to be answered under oath, fully, completely, and separately and each answer must correspond to the Interrogatory to which it responds. The answers to these Interrogatories shall be signed under oath by the Person making them.

5. Each individual Interrogatory should be construed independently. No Interrogatory shall be construed by reference to another Interrogatory (or document request) for the purpose of limiting the response to either.

6. These Interrogatories are continuing and require further and supplemental production whenever Choice (including Choice’s attorneys, accountants, bookkeepers, advisors, agents, other service providers, and any others acting on its behalf) locate further responsive information.

7. If Choice withholds any information or Documents called for in an Interrogatory on the grounds of privilege, provide in a privilege log the following information with respect to any such information or Documents:

- (a) The nature of privilege claimed (*e.g.*, attorney-client, work product); if work-product privileged is asserted, provide the proceeding for which the Document was prepared;
- (b) The facts upon which Choice relies as the basis for claiming the privilege as to the specific information;

- (c) In the case of a Document, identify:
- (i) each person who is an author or originator of the Document, including each person's position at the time the Document was prepared and the current (or last known) name, home and business address, telephone number and position of each person;
  - (ii) the title (if any) of the Document;
  - (iii) the date of the Document;
  - (iv) each person to whom the Document was addressed or distributed;
  - (v) the type of Document;
  - (vi) the general subject matter of the Document; and
  - (vii) the present location of the Document.

### **III. INTERROGATORIES & DOCUMENT REQUESTS**

1. Identify Choice's Specialized Mobile Radio ("SMR") service area by providing maps of each of Choice's towers or other facilities that Choice is relying upon or in its Application. For each tower and/or facility, Choice must identify the service area and technical information regarding the signal throughout Choice's service area. Identify any areas where Choice does not provide service today and any areas where Choice does not provide service in Innovative's service area.

2. Provide all documents evidencing or relating to any efforts or plans described in response to Interrogatory 1.

3. If Choice plans to build new towers or facilities to expand its SMR service area, provide maps and identify where Choice plans to build such new towers or facilities. Identify what efforts Choice has made to implement these new towers or facilities, including but not limited to budget plans, contacting vendors, and purchasing equipment. Identify the timeframe that Choice plans to build these new towers or facilities.

4. Provide all documents evidencing or relating to any efforts or plans described in response to Interrogatory 3.

5. Explain what changes have been made to Choice's FCC licenses since Choice stated in a certified interrogatory response to the VIPSC that "Choice's licensed service area is not identical to Innovative's service area."

6. Describe and document which of the Supported Services that Choice provides today. For each Supported Service, provide diagrams, maps and any other evidence that Choice has within its possession and control.

7. Provide all documents evidencing or relating to any Supported Service described in response to Interrogatory 6.

8. For each Supported Service that Choice does not provide today, provide the dates that Choice will provide each Supported Service. If the Supported Services will be available in some locations before others, identify them by dates and places. Identify what steps Choice has taken to ensure that it can timely provide the Supported Services, including but not limited to financial plans, research regarding the cost of such upgrades, contacting vendors, and any other actions that Choice has taken to provide the Supported Services.

9. Provide all documents evidencing or relating to Choice's response to Interrogatory 8.

10. Identify and explain how Choice uses its FCC SMR license. In this response, Choice should identify if it uses its SMR license to provide voice service or other services and how Choice provides single-party service through its SMR service. If Choice does not provide voice-grade service today, identify the type of services that Choice offers using its SMR license.

If Choice offers any service using its SMR license, identify the plans available to customers in the U.S. Virgin Islands, provide examples of any advertisements for the SMR service, and identify the number of customers that subscribe to this service.

11. Provide all documents evidencing or relating to any services, advertisements, customers or otherwise described in response to Interrogatory 10.

12. Diagram and detail the service that Choice provides to Little St. James Island. Identify how many customers that Choice provides service to on Little St. James Island.

13. Provide all documents evidencing or relating to the services, diagrams, and customers described in response to Interrogatory 12.

14. Identify and provide documentation to support Choice's statement that it provides voice-grade access to the public switched telephone network ("PSTN").

15. Identify and provide documentation to support Choice's statement that it provides access to "911" services through the PSTN.

16. Identify and provide documentation to support Choice's statement that it has interconnection agreement with interexchange carriers.

17. Identify and provide documentation to support Choice's claim that its parent company's Sonus can be used to provide reliable DTMF signaling in the U.S. Virgin Islands.

18. Identify and provide documentation to support Choice's claim that there will be "at most" a "minimal" impact on the universal service fund if Choice is granted ETC status.

19. Describe how Choice will comply with its obligations to the FCC's and the VIPSC's Lifeline and Link-Up programs.

20. Provide all documents evidencing or relating to Choice's response to Interrogatory 19.

21. Identify and provide documentation to support how Choice satisfies each of the following criteria, from the Joint Board's Recommended Decision (*Federal-State Joint Board on Universal Service*, Recommended Decision, 19 FCC Rcd 4257 (Jt. Bd. 2004)):

- (a) the financial resources and ability to provide quality services throughout the designated service area;
- (b) the commitment and ability to provide Supported Services, by requiring a "formal build-out plan for areas where facilities had not yet been built";
- (c) the ability to remain functional in emergency situations;
- (d) that it satisfies any consumer protection requirements; and
- (e) provides a minimum amount of local usage as part of their basic package of Supported Services.



# **EXHIBIT 3**

GOVERNMENT OF THE VIRGIN ISLANDS  
OF THE UNITED STATES

*Public Services Commission*

IN RE: )  
 ) PSC DOCKET No.548  
REQUESTS OF CHOICE COMMUNICATIONS, LLC )  
 )

INTERIM DECISION OF HEARING EXAMINER  
RE: ELGIBILITY

**Procedural History**

On October 29, 2002 Choice Communications LLC (hereafter referred to as "Choice") requested that the Virgin Islands Public Service Commission (hereafter designated the "VIPSC" or the "Commission") recognize it as an Eligible Telecommunications Carrier ("ETC") in accordance with requirements set forth in 47 U.S.C. § 214(e) and 47CFR54.201 and endorse its application to the Federal Communications Commission for Universal Service Fund ("USF") support.<sup>1</sup>

Choice Communications currently holds certain licenses granted by the FCC to operate in the United States Virgin Islands as a Specialized Mobile Radio service ("SMR") provider.<sup>2</sup> Under the general terms and conditions of those federal licenses Choice Communications is permitted to provide retail, voice-grade wireless communications services that emulate wireline telephone services offered by telephone companies like Innovative Telephone. Choice currently provides "wireless", "cellphone" or "mobile" services to commercial firms and individual consumers in competition with similar services offered by others.

The VIPSC formally entertained the October 29, 2002 request of Choice at its April 24, 2003 meeting and granted further consideration to Choice's eligibility and qualifications for designation as an eligible telecommunications carrier.<sup>3</sup> Pursuant to authority granted the VIPSC in 30 V.I.R.R. §§11-31 the Virgin Islands Public Service Commission appointed Rosalie Simmonds Ballentine, Esq., to act on its behalf as Hearing Examiner in examining all matters pertaining to the eligibility matter and submit any

<sup>1</sup> The formal request was made by Cornelius Prior, Jr. Chairman of Atlantic Tele-Network, Inc. on behalf of Choice Communications, LLC in correspondence with Desmond Maynard, Esq. acting as Chairman of the Virgin Islands Public Service Commission dated October 29, 2002. Choice Communications, LLC – a wholly-owned subsidiary of Atlantic Tele-Network, Inc. – until recently engaged in the telecommunications business in the United States Virgin Islands as Wireless World, LLC.

<sup>2</sup> Choice Communications holds no operating licenses from the Virgin Islands Public Services Commission. As an FCC license holder it is not subject to VIPSC rules, regulations and requirements otherwise applicable to telecommunications services providers licensed by the VIPSC.

<sup>3</sup> The Commission designated the proceeding as Docket No. 548 and notified the interested parties of its intent to fully examine the merits of the request made by Choice.

recommendations that merit consideration by the Commission at a future date.<sup>4</sup> By separate action, Gorham, Gold, Greenwich & Associates was appointed as Technical Consultant to assist Attorney Ballentine in conducting the evaluation of Choice's proposal.<sup>5</sup>

As a matter of administrative efficiency, the Commission elected to incorporate into Docket No. 548 an earlier request by Choice Communications for DS3-GRADE-equivalent services from Innovative Telephone Company (hereafter referred to as "Innovative" or the "incumbent provider").<sup>6</sup> As the petitioner, Choice indicated in its request that Innovative does not offer DS3-GRADE-equivalent services -- at either retail or wholesale rates -- effectively impeding the ability of Choice to conduct business in the United States Virgin Islands. In its July 12, 2002 petition, Choice Communication sought assistance from the VIPSC in securing access to -- and use of -- DS3-GRADE equivalent transmission facilities for its own use from Innovative. The Commission directed the Hearing Examiner in Docket No. 548 to review the request made by Choice and take such evidence in this proceeding as the Hearing Examiner deemed necessary to proffer an informed recommendation to the Commission on this matter. Pursuant to a procedural schedule set forth at the outset of this proceeding -- and agreed to by the interested parties -- the interest of the VIPSC in the instant Decision is limited the specific request by Choice Communications for designation as an Eligible Telecommunications Carrier.<sup>7</sup>

In its October 29, 2002 Petition to the Virgin Islands Public Services Commission, Choice Communications expressed interest in seeking recognition from the FCC as an Eligible Telecommunications Carrier serving the United States Virgin Islands. Pursuant to requirements contained in 47 U.S.C. § 214(e)(2) and rules set forth by the FCC in 47CFR54.201 an applicant must first demonstrate that it satisfies the basic eligibility criteria set forth by the statute and the rules.<sup>8</sup> After such a determination is

<sup>4</sup> See Order No. 19/2003 in Docket No. 548 issued by the Virgin Islands Public Services Commission on May 8, 2003.

<sup>5</sup> See Order No. 25/2003 in Docket No. 548 issued by the Virgin Islands Public Services Commission on May 28, 2003.

<sup>6</sup> The formal request was made by Cornelius Prior, Jr. Chairman of Atlantic Tele-Network, Inc. on behalf of Wireless World LLC in correspondence with Desmond Maynard, Esq. acting as Chairman of the Virgin Islands Public Service Commission dated July 12, 2002 (hereafter referred to as Declaration of Cornelius B. Prior, Jr.). Wireless World, LLC -- a wholly-owned subsidiary of Atlantic Tele-Network, Inc. is currently engaged in the telecommunications business in the United States Virgin Islands as Choice Communications, LLC.

<sup>7</sup> A proposed Notice of Scope and Schedule for Docket No. 548 was issued to interested parties by the Hearing Examiner on July 2, 2003. Pursuant to requests made by the parties at a July 8, 2003 Procedural Conference certain dates affixed to the July 2 schedule were modified and a Revised Scheduling Order was issued on July 21, 2003. The approved scheduling order bi-furcated the principal matters presented for consideration (ie., ETC designation and DS3-GRADE service) into separate "tracks" and established independent schedules for each. Matters related to DS3-GRADE service remain open for consideration and will be addressed separately in the Hearing Examiner's Report and Recommendations due October 21, 2003.

<sup>8</sup> 47CFR54.201(d) requires that "upon request and consistent with the public interest, convenience, and necessity, the state commission may, in the case of an area served by a rural telephone company, and shall, in the call of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated by the state commission, so long as each additional requesting carrier

made, the VIPSC must find that granting such a request in the area served by a rural telephone company is in the public interest.<sup>9</sup> It is the opinion of the Hearing Examiner that the construction of 47 U.S.C. § 214(e)(2) and the requirements set forth in 47CFR54.201 dictate that the Virgin Island Public Services Commission determine that the general eligibility requirements are satisfied before any consideration can be given to matters of public interest.<sup>10</sup>

### Eligibility Requirements

In statements before the Virgin Islands Public Services Commission, representatives of Choice Communications expressed a continued interest in competing with Innovative Communications in the United States Virgin Islands for end-users of various telecommunications services.<sup>11</sup> Choice has suggested in admissions before the VIPSC in this proceeding that approval of the request for ETC designation would afford Choice Communications financial support from the Universal Service Fund (hereafter referred to as "USF" or the "Fund") to assist in its effort to achieve competitive parity with Innovative that is only available to a provider that meets the qualifications set forth for an Eligible Telecommunications Carrier<sup>12</sup>.

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meets the requirements of paragraph (d) of this section. Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the state commission shall find that the designation is in the public interest."

<sup>9</sup>47 U.S.C. § 214(e)(2) requires a State commission (which the VIPSC is considered to be for terms of implementation of the Telecommunications Act of 1996) to find that designation of an additional eligible telecommunications carrier (such as Choice) is "in the public interest" when the incumbent local exchange carrier is a rural telephone company. By its own actions in Docket No. 526 the VIPSC reaffirmed the rural telephone company designation previously applied to Innovative Telephone Company. Accordingly, this proceeding is necessitated, in part, by the need to satisfy a federal statutory requirement conveyed by Congress to the VIPSC to implement.

<sup>10</sup> The general eligibility requirements are universal obligations for all applicants seeking ETC designation. The public interest standard set forth in 47CFR54.201(c) serves as an additional requirement applicable only to applicants seeking designation in a geographic area served by a rural telephone company and per the rules is only considered after a determination has been made that the general eligibility requirements have been satisfied.

<sup>11</sup> The corporate parent of Choice (ATN Networks) previously filed an application with the VIPSC on behalf of Wireless World, Inc. in 2001 (VIPSC Docket No. 526) that sought to have certain exemptions accorded to rural telephone companies [see 47 § U.S.C. 251(f)(1) and 47 § U.S.C. 251(f)(2)] "lifted" by the VIPSC and replaced with a set of terms and conditions that would afford Wireless World an improved ability to compete with Innovative. The VIPSC subsequently rejected that application and found insufficient evidence to support Wireless World's petition. In rejecting the petition, however, the VIPSC did not deny Wireless World's right to compete but merely denied it the right to certain preferential terms and conditions under the federal exemption. As a result of that decision Wireless World – and now Choice – can participate in the Virgin Islands telecommunications market but the cost to do so does not assure it of financial success. Mr. Prior, speaking as Chairman of ATN at the April 24, 2003 meeting of the VIPSC reiterated his interest in expanding the business interests of Choice Communications in the United States Virgin Islands.

<sup>12</sup> See Declaration of Cornelius B. Prior, Jr. dated October 29, 2002, p.1. In that communiqué Mr. Prior states "[t]his designation is required to receive the universal services support necessary to make it financially prudent for Choice to bring the benefits of additional competition to consumers in the U.S. Virgin Islands".

As indicated earlier in this Decision, Choice must show that it has satisfied the eligibility requirements set forth in 47 § U.S.C. 254 and 47 § U.S.C. 214(e) and further amplified in rules set forth by the Federal Communications Commission (hereafter referred to as "FCC") in 47CFR54.101(a) before it can apply for support from the Universal Service Fund.<sup>13</sup> The petition presented for consideration by the VIPSC – and addressed in this proceeding -- represents only the first step in the supplemental funding process provided for by the United States Congress.<sup>14</sup>

In its October 29, 2002 petition, Choice asserted that it qualified for USF support; however, Choice expressly acknowledge in the same submission that it does not currently satisfy all of the eligibility criteria set forth by the statutes for designation as an eligible telecommunications carrier.<sup>15</sup> Instead, Choice suggests to the VIPSC that it will offer the specified services when it is designated as an ETC. Choice goes on to assert that the FCC has in certain instances granted ETC status to an applicant that has not fully satisfied the criteria based upon assurances that it will do so in the future.<sup>16</sup>

It is an undisputed fact that at least one applicant has been designated as an eligible telecommunications carrier by the FCC that had not fully satisfied the eligibility requirements at the time of its petition and indicated that with additional time it would be able to fulfill all of the requirements. The actions of the FCC in that matter, however, do not provide an adequate foundation for the Hearing Examiner to ignore the FCC's expressly stated caution in its Rules and Regulations. Specifically, the FCC asserts that a state commission can only support an incomplete application when additional time is needed to complete network upgrades needed to provide single-party service, access to enhanced 911 service, or toll limitation, and only after a specific finding is made to the effect that the inability to provide these services or functions is a product of "extraordinary circumstances".<sup>17</sup>

<sup>13</sup> 47CFR54.201 requires Choice to demonstrate that it offers the specific telecommunications services that are supported by the Universal Service Fund and delineated in 47CFR54.101(a). Specifically, an applicant must provide a) voice grade access to the public switched network, b) local usage, c) dual tone multi-frequency signaling or its functional equivalent, d) single-party service or its equivalent, e) access to emergency services, f) access to operator services, g) access to interexchange service, h) access to directory assistance, i) toll limitation.

<sup>14</sup> Any endorsement that might be made by the VIPSC of Choice's petition will not ensure that a subsequent application to the Universal Service Fund by Choice will be automatically approved – or even fully funded. The level of support provided any eligible carrier is determined by the Universal Service Fund administrators. The VIPSC is limited in its role in this process to ensuring that any party seeking support from the USF has been found eligible for such assistance.

<sup>15</sup> Choice states in its initial petition that it "offers, or will offer, all of the services and functionalities supported by the universal service support mechanisms as set forth in section 54.101(a) of the FCC's rules." See Cornelius B. Prior, Jr. to Desmond Maynard, Esq. dated October 29, 2002, p.3.

<sup>16</sup> Choice cites in its October 29, 2002 correspondence to FCC Memorandum Opinion and Order, DA 02-1318 *IT&E Overseas, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the Territory of Guam* (June 6, 2002) as evidence of the willingness of the FCC to grant ETC designation contingent upon an expression of intent by the applicant.

<sup>17</sup> 47CFR54.101(c) specifically limits the ability of a state commission to grant dispensation to any ETC applicant except when the applicant has demonstrated an unquestionable commitment to providing single-party service, access to enhanced 911 service or toll limitation but is currently unable to complete the network upgrades necessary to support such services. The FCC strongly suggests by its terminology in this

## Analysis

In this proceeding Choice has offered evidence and argument in support of its petition and the Hearing Examiner appreciated the efforts by Choice to satisfy the VIPSC's interest. However, after reviewing the filings made by Choice in this proceeding, it is an undeniable fact that Choice does not presently satisfy all of the eligibility requirements set forth by Congress and the FCC. Consequently, any endorsement by the VIPSC of Choice's petition would require the Commission to exercise the exemption authority provided it by the FCC in 47CFR54.101(c).

As stated earlier in this report the authority afforded the VIPSC by the 47CFR54.1101(c) is severely limited. Pursuant to that rule the VIPSC can only endorse a deficient application when the full compliance can be achieved with an "extension of time" and where deficiencies in the applications are limited to "single-party service", "access to enhanced 911 service" and/or "toll limitations". It is assumed by the FCC that the other six eligibility requirements are fully satisfied and the remaining three will be fully satisfied in a determinable timeframe. 47CFR54.101(c) assumes an applicant has already made some discernible commitment to those infrastructure improvements necessary to support the remaining functionalities described above.

After reviewing the requirements of 47CFR54.101(c) and the limited application of that rule by the FCC in its own decisions it is apparent that it does not provide a state agency the latitude suggested by Choice in its various submissions. The rule specifically permits an agency to consider only the three expressly identified areas to the exclusion of all others. This means the number of deficiencies can be no more than three and no others than the three referenced in the rule. It is the opinion of the Hearing Examiner that Choice misinterprets both the intent of 47CFR54.101(c) and the applicability of it to this proceeding.

Choice asserts in its Brief that it presently lacks only the ability to provide single-party service and requests the extension of time in which to satisfy that requirement.<sup>18</sup> In so doing, Choice appears to be asking the VIPSC to invoke the authority it has under 47CFR54.101(c). However, Choice previously acknowledged in this proceeding that it does not offer access to operator services, directory assistance services, E911 service or interexchange services as well as dual tone multi-frequency or toll limitation.<sup>19</sup> After reviewing the submissions made in this proceeding the Hearing Examiner finds no evidence that the deficiencies recognized by Mr. Prior in his October 29, 2002 declaration have been eliminated. Furthermore, no evidence submitted by Choice in this proceeding suggests that "additional time" is all that is required to eliminate these

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section that the only acceptable basis for a state commission to find an applicant eligible for ETC designation would be when the sole impediment to compliance is the additional time needed to complete network upgrades. 47CFR54.101(c) offer a state commission no other grounds than "time" to support an incomplete application.

<sup>18</sup> Opening Brief Choice Communications LLC, p.8.

<sup>19</sup> See Declaration of Cornelius B. Prior, Jr. dated October 29, 2002, p.4.

deficiencies. In this proceeding Choice has offered no substantive evidence that would clearly demonstrate a tangible commitment has been made to eliminating these deficiencies -- or at least reducing them to the three deficiencies permissible under 47CFR54.101(c). Such evidence that could be offered include -- but not limited to -- equipment orders, project schedules, deployment plans, upgrade schedules, etc. Instead, Choice has offered little other than general references to its plans. It is the opinion of the Hearing Examiner that this is woefully insufficient for the VIPSC to conclude "exceptional circumstances exist" as required by 47CFR54.1010(c).

Absent empirical evidence to the contrary, the Hearing Examiner must conclude that Choice's remaining deficiencies are more extensive than that suggested by the Brief and, therefore, fail to satisfy the basic service requisites that are prescribed by 47CFR54.101(c). Therefore, the Hearing Examiner finds no basis upon which to recommend dispensation to Choice in this matter at this time using the authority provided by 47CFR54.101(c).

Separate -- but related to the issue of according dispensation to Choice Communications -- the Hearing Examiner asked interested parties to consider the authority available to the VIPSC to enforce any conditions that might be placed upon Choice were the PSC able to endorse a deficient application.<sup>20</sup> Specifically, the Hearing Examiner was interested in knowing what, if any, authority it had to ensure assurance made by the applicant in this proceeding were fulfilled in the future. Although the Hearing Examiner has concluded the applicant fails to meet the basic eligibility requirements set forth in 47 U.S.C. § 214(e) and fails to meet the basic requirements for an exception set forth in 47CFR54.101(c) it was deemed beneficial by the Hearing Examiner to have the parties consider the possibility that the requirements of 47CFR54.101(c) might be satisfied and dispensation may be sought again in the future.

For that reason the Hearing Examiner considered it important to consider the question of authority and jurisdiction. In requesting comments from the parties it was not the intent of the Hearing Examiner to suggest that the VIPSC might seek to prescribe additional requirements to those presented by the Telecommunications Act and the FCC rules. Instead, the request was directed at solely examining the powers afforded this agency by the Virgin Islands Code to enforce fulfillment of any expressed commitment by Choice to the VIPSC in this proceeding.

Given Choice Communication's repeated assurances that it "will" fulfill all of the eligibility requirements set forth by the Act, the Hearing Examiner did not believe the request to be frivolous or onerous. The Hearing Examiner received Briefs from both Choice Communications and Innovative Telephone that were both informative and insightful. It is apparent from the arguments presented by Choice that the VIPSC lacks means under federal law to impose conditions upon any endorsement that it might make of the request by Choice for ETC designation. Of even greater concern is the suggestion by Innovative Telephone that the VIPSC maintains only nominal authority over any

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<sup>20</sup>That is a petition wherein the only deficiencies were those identified in 47CFR54.101(c)

aspect of Choice Communications by virtue of its status as a Specialized Mobile Radio services-provider.

It is a fact that as a Specialized Mobile Radio services-provider Choice Communications is not currently subject in any way to the rules, regulations and requirements of the Virgin Islands Public Services Commission. It is also a fact that the mere act of designating Choice Communications as an eligible telecommunications carrier will not make it subject to the authority of the VIPSC in the future. A review of the submissions made by Choice in this proceeding strongly indicates that primary authority over Choice Communications rests with the Federal Communications Commission. It is the opinion of the Hearing Examiner that the role ascribed to the VIPSC by federal statutes is incidental at best; and Virgin Island Code provides offers little more.

As a consequence of that fact, and the very limited ability of the VIPSC to enforce any conditions it might apply to a future application, it is the opinion of the Hearing Examiner that the Virgin Islands Public Service Commission lacks sufficient means to protect the public's interest in matters related to Choice Communications' delivery of telecommunications services, and is effectively denied the ability to discharge its responsibilities to the general public. Consequently, it is the opinion of the Hearing Examiner that the Virgin Islands Public Service Commission has little basis to assert jurisdictional authority in this matter and must cede responsibility to the FCC in this particular matter. It would be irresponsible for the Hearing Examiner to recommend to the VIPSC that it consider an action that knowingly limits the VIPSC's ability to protect the public's interest and fulfill its delegated responsibilities.

### **Opinion and Recommendation**

In conclusion, the evidence presented is sufficient for the Commission to find that Choice has not met the basic eligibility requirements for an applicant. Furthermore, the evidence presented shows that the deficiencies in the petition exceed those permitted by the FCC in 47CFR54.101(c) that might permit this agency to grant even qualified endorsement of the petition. Additionally, the evidence presented shows that the enforcement powers available to the Virgin Islands Public Service Commission to ensure compliance by Choice with any requirements set forth by itself, the FCC or the Universal Service Administration Corporation are non-existent at the present time.

Separately, the evidence presented is enough for the Hearing Examiner to offer the opinion that the VIPSC lacks sufficient jurisdiction over this matter and should not pursue it further in this forum. Nothing presented in this proceeding mitigates the evidence and argument presented in previous proceedings that challenges any jurisdictional authority of this agency over Choice's business operations. Absent any acknowledgement by Choice in this proceeding that this agency has any legal authority over Choice Communications the Hearing Examiner is left to conclude that the VIPSC cannot act upon the request made of it by Choice Communications at this time.



Therefore, pursuant to instructions set forth by the FCC the Hearing Examiner will seek an "affirmative statement" from the VIPSC that it lacks jurisdiction to perform the requested designation.<sup>21</sup> Upon receipt of such a statement by the VIPSC, Choice Communications will be free to file a request directly with the Federal Communications Commission in accordance with its rules and requirements. The Hearing Examiner considers this matter complete and will entertain no further comment on this subject. Parties will be free to present any comment directly to the Commission at the time this matter is taken under consideration on October 21, 2003.

Dated: September 4, 2003

/s/ Rosalie S. Ballentine  
Rosalie Simmonds Ballentine, Esq.  
Hearing Examiner

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<sup>21</sup> This procedures was set forth in the FCC's Twelfth Report and Order CC Docket No. 96-45 *In the Matter of Federal-State Joint Board on Universal Service* and reiterated in FCC Memorandum Opinion and Order, DA 02-1318 *IT&E Overseas, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the Territory of Guam* (June 6, 2002)

# **EXHIBIT 4**

GOVERNMENT OF THE VIRGIN ISLANDS  
OF THE UNITED STATES

*Public Services Commission*

IN RE:

REQUESTS OF CHOICE COMMUNICATIONS  
RE REQUIRING VITELCO TO TARIFF AND OFFER  
DS3 SERVICE AND FOR CERTIFICATION AS AN  
ELIGIBLE TELECOMMUNICATIONS CARRIER

PSC DOCKET NO. 548

ORDER NO.: 19/2004

**ORDER**

WHEREAS, Choice Communications, LLC has by letter dated July 12, 2002, requested that the Commission direct VITELCO d/b/a Innovative Telephone to tariff and offer DS3 service and by letter dated October 29, 2002 requested the Commission to certify Choice Communications, LLC as an eligible telecommunications carrier pursuant to 47 U.S.C. §214. The Commission voted to open this docket to review the requests submitted by Choice Communications.

WHEREAS The Commission appointed a hearing examiner and a technical consultant to carry out an investigation and report back to the Commission findings and recommendations;

WHEREAS the Hearing Examiner filed her report with the Commission on November 10, 2003;

WHEREAS the Commission disposed of a portion of this docket regarding the request for designation as an eligible telecommunications carrier by Order 18/2004.

WHEREAS the matter came on for hearing on May 4, 2004. The parties were given an opportunity to be heard and the Commission being otherwise satisfied in the premises; the Commission voted to accept the findings and recommendations of the Hearing Examiner as presented;

IT IS ORDERED that the findings and recommendations of the Hearing Examiner are accepted.

Dated: May 5, 2004

  
\_\_\_\_\_  
VALENCIO JACKSON  
Chairman

cc: Keithley Joseph, Executive Director  
Frederick G. Watts, Esquire  
All Counsel of Record  
Innovative Telephone

GOVERNMENT OF THE VIRGIN ISLANDS  
OF THE UNITED STATES

*Public Services Commission*

IN RE:

REQUESTS OF CHOICE COMMUNICATIONS, LLC

PSC DOCKET NO. 548

ORDER NO.: 18 /2004

ORDER


THIS MATTER came before the Commission on the request by Choice Communications, LLC to accept and approve that portion of the Hearing Examiner's Report that the Commission "lacks jurisdictional authority over Choice Communications" on the request of Choice to be recognized as an Eligible Telecommunications Carrier in the United States Virgin Islands. The Commission having been provided the various filings in the docket including the final report of the Hearing Examiner and being otherwise satisfied in the premises;

IT IS ORDERED that the portion of the Hearing Examiner's Report as aforesaid is approved;

IT IS FURTHER ORDERED that the Chairman is authorized to sign a letter in the appropriate form reflecting the decision of the Commission that it lacks the said jurisdictional authority.

Dated: February 27, 2004

FOR THE COMMISSION

  
VALENZIO JACKSON  
Chairman

cc: Keithley Joseph, Executive Director  
Frederick G. Warts, Esquire  
Neal Piror, Chairman, CC, LLC

# **EXHIBIT 5**

1 UNITED STATES DISTRICT COURT  
2 DISTRICT OF THE VIRGIN ISLANDS  
3 DIVISION OF ST. THOMAS & ST. JOHN

4 WIRELESS WORLD,  
5 PLAINTIFF

6 Vs.

CIVIL NO.  
2002-0061

7 INNOVATIVE COMM. CORP,  
8 DEFENDANTS

9 SEPTEMBER 15, 2004  
10 MITCHELL COHEN COURTHOUSE  
11 JOHN F. GERRY PLAZA  
12 CAMDEN, NEW JERSEY 08101

13 B E F O R E: THE HONORABLE STANLEY S. BROTMAN  
14 SENIOR U.S. DISTRICT COURT JUDGE  
15 DISTRICT OF NEW JERSEY

16 A P P E A R A N C E S:

17 MOORE, DODSON & RUSSELL, P.C.  
18 BY: J. DARYL DODSON, ESQUIRE  
19 FOR THE PLAINTIFF

20 WILEY, REIN & FIELDING, LLP  
21 BY: GREGORY J. VOGT, ESQUIRE  
22 FOR THE DEFENDANT

23 MICHAEL C. DUNSTON, ESQUIRE  
24 FOR V.I. PUBLIC SERVICE COMMISSION

25 PETITION FOR REVIEW

FRANCIS J. GABLE, C.S.R., R.M.R.  
OFFICIAL U.S. REPORTER  
(856) 757-5088

1 THE COURT: Good morning, everybody. Be seated.

2 All right. Put your appearances on the record,  
3 please.

4 MR. DODSON: Daryl Dodson, on behalf of the  
5 petitioners, Wireless World, LLC.

6 MR. VOGT: Greg Vogt, on behalf of the appellee -- the  
7 intervener rather, Virgin Islands Telephone Company, or  
8 Innovative Telephone as their trade name.

9 MR. DUNSTON: Michael Dunston, appearing on behalf of  
10 the Virgin Islands Public Services Commission.

11 THE COURT: All right. Now, I gather you're going to  
12 begin, Mr. Dodson.

13 MR. DODSON: Yes, your Honor.

14 THE COURT: I started to read the transcript of the  
15 previous proceeding, I may change around a little bit. I  
16 want you to give me in a nutshell, the law. I know the law  
17 you're referring to and all, the process, how you fit into  
18 the process, what the -- not in legalese, but in plain  
19 English, what was the result of the hearing, the jurisdiction  
20 of this Court; and assuming there is jurisdiction, how do I  
21 treat findings of fact, and how do I treat conclusions of  
22 law; is this a de novo proceeding in certain respects; and  
23 how the finding of the hearing -- finding of the examiner,  
24 hearing examiner affects each of the parties to this  
25 proceeding.



1 that.

2 I'm not claiming anyone is corrupt. This is not the  
3 first time I made this point, it's in my brief. It's a  
4 legitimate point, which is why are federal judges elected,  
5 appointed for life. And the reason is, to ride herd on the  
6 political branches.

7 I just want to read two sentences from my initial brief  
8 in the conclusion, where I say, in providing for federal  
9 court review of the actions or state regulatory commissions,  
10 Congress was keenly aware that such commissions are political  
11 bodies, composed of political appointees, reacting to  
12 political considerations, and important political purpose is  
13 served by keeping subsidies residential service hidden.

14 THE COURT: What is your case citing that, or is that  
15 by Dodson?

16 MR. DODSON: This is my broader point, which is voters  
17 venting from subsidized rates remain content, while consumers  
18 incurring the costs, remain ignorant. And there are powerful  
19 reasons for local officials to resist the '96 act, and to  
20 resist the dictates that have been handed down by the U.S.  
21 Congress.

22 But that's why you're here, Judge, to make sure that  
23 they follow the law. Even though it may be unpleasant for  
24 them, or maybe some transitional costs, or maybe someone's  
25 local phone service goes up by a dollar or two and they

1 complain about it. That's why we have this provision.

2 Now, attorney Vogt also makes some comments about how,  
3 you know, the cases clearly establish that we're a  
4 competition, and when protecting universal service come in to  
5 conflict universal service trumps. You know something, there  
6 is no case that holds that. And, indeed, the case that's I  
7 cite into my brief, such as the Allenco (ph) case, says that  
8 these are fundamentally -- they're dual concerns. And  
9 neither one trumps the other.

10 In fact, if you look at the main case, which is cited on  
11 page 19 of my reply brief at page 47, it says that, you know,  
12 contrary to the idea of the universal service, are the  
13 residents, Section 254 of the communications act, being  
14 anti-competition provision. In fact, it contemplates that  
15 one of its goals is to have a broad variety of choices, a  
16 broad variety of competitors.

17 So, there is absolutely no support for the idea that one  
18 of these concerns should overtake the other. In fact,  
19 attorney Vogt can't deny that consistent theme of this act is  
20 to introduce competition. And to drive costs -- drive rates  
21 down closer to costs.

22 In addition to not citing many specific cases, I notice  
23 there's one interesting thing about attorney Vogt's  
24 presentation, was that he didn't read anything from the  
25 hearing examiner's report. He didn't quote any findings. He

1 characterized them as findings, but, Judge, where is the beef  
2 here. Where is anywhere where the hearing examiner made any  
3 finding.

4 And what was he supposed to do. That's another thing  
5 that Innovative has never staked out in this proceeding,  
6 which is what is the Section 254's analysis, what does it  
7 require.

8 Section 254 has six goals. They include access to  
9 advanced services, they include elementary and secondary  
10 schools and classrooms, having access to advanced  
11 telecommunication services; nowhere here does it say  
12 subsidies. Nowhere here does it say anything like that.

13 Where is the beef. Where is any kind of finding that  
14 universal services would be impaired. Instead, we have a  
15 bunch of hedged, strange inconclusive findings like this;  
16 quote, it's not readily evident that removing the rural  
17 exemption will not impact on the ability of the VIPSE to  
18 pursue the goals of universal service.

19 That's not a finding, that's just restating a question.

20 Now, I really anticipate that attorney Vogt might get up  
21 and say what Innovative has said before on in their briefs,  
22 which is a, ah, well there is a finding here. Look on page  
23 29 of the May 22nd report, where the hearing examiner  
24 specifically found that if we allow competition come into  
25 this market, then Innovative is going to lose access to

1 what's called universal service funds. Or USF.

2 Universal service funds is a trove of money that is set  
3 aside and given to rural carriers, in order to help them keep  
4 rates low. And Innovative had told this Court in one of its  
5 initial briefs, that it would lose millions of dollars of  
6 such universal service funds, if Wireless World was allowed  
7 to come in.

8 But as we demonstrated, that's not true. It's going to  
9 be a neutral impact. In fact, for one type of entry, for  
10 discounted line resell, Innovative keeps all the universal  
11 service funds. For the other kind, which called UNE  
12 competition, those are the two flavors under the statute,  
13 Innovative would be made whole.

14 And you know what, when we appeared before Judge Moore,  
15 attorney Vogt was forced to admit that that point had no  
16 validity, that this finding was just wrong. And I think this  
17 affected the hearing examiner's entire decision, when he  
18 said, you know, well, if we allow Wireless World to come in,  
19 then universal service won't be protected. Instrumental to  
20 that was his factual conclusion that the USF funds would be  
21 diminished.

22 And attorney Vogt and the hearing -- Judge Moore had a  
23 lot of questions in his hearing, April 15th hearing.

24 Attorney Vogt was forced to admit at page 50 and 51; now  
25 Wireless World claims that the agency said that universal

1 service funds would be lost if discounted resale would be  
2 permitted; then goes on to claim that the hearing examiner  
3 never said that, when you just heard that's exactly what he  
4 said.

5 He goes on to talk about unbundled network elements.  
6 He says, when a competitor gets unbundled network elements,  
7 that universal service money is lost, it's transferred over  
8 to the competitor, which is true. But he goes on to say, I  
9 would admit that if all is going well, that lost universal  
10 service money should be made up, if the price for the  
11 unbundled network elements is set correctly and paid  
12 consistently, then that money is being paid to Innovative  
13 telephone so the revenues are complete.

14 The record is clear on this and completely described in  
15 the record.

16 So here he admits that what the hearing examiner found  
17 was just flat wrong. And I would submit to your Honor, that  
18 this is an island of factual findings in a sea of hedged and  
19 inconclusive findings.

20 The one thing that the hearing examiner found was wrong,  
21 and attorney Vogt can't point anything that even resembles a  
22 factual finding on this point.

23 Now, as far as the cross appeal, attorney Vogt also  
24 doesn't really deny that he has no standing to pursue this  
25 cross-appeal, because Innovative won, it's not an aggrieved

1 party. There is no jurisdiction under Section 252 for it to  
2 come in and file a cross-appeal.

3 There was a determination made that it's rural exemption  
4 stayed in place. It prevailed on that, and it's not  
5 aggrieved, it suffered no injury of fact and has no authority  
6 to appeal.

7 The case law is clear on that. In an administrative  
8 proceeding, if a party prevails, it can't then go to the  
9 appellate court and quibble about subsidiary factual findings  
10 within that. It's the winner, it can't pick it up.

11 And, in fact, at page 59 and 60 of this same hearing,  
12 attorney Vogt admitted to Judge Moore, he said, I will admit  
13 to your Honor -- this is page 59; that generally the winning  
14 party does not have standing to question specific findings in  
15 a particular case. They're the winning party, he's  
16 questioning specific findings.

17 But then he goes on to say, this really falls into an  
18 exception. Well, we never really discussed what the  
19 exception is, but here it is, it's Innovative's reply brief  
20 on page 16. See if this makes any sense; a party who  
21 prevails on a challenge to a rule as applied, is nonetheless  
22 permitted to appeal from an adverse decision on a facial  
23 challenge to the rule itself.

24 This is rule making. There is an adjudication. This  
25 has nothing to do with this proceeding. I think the point is

1 that Innovative has conceded that shouldn't even be before  
2 this Court on its cross-appeal because it's won.

3 Now, on the economic burden point, I think I can say the  
4 same thing about attorney Vogt which he said about me, which  
5 is he is trying to take a factual finding and elevate that  
6 into some sort of error of law. He's trying to say the  
7 hearing examiner, when he found there would be no undue  
8 economic burden, applied the wrong legal test. But his own  
9 brief gives it away.

10 Because in his own brief, he uses the phrase down-play.  
11 His quarrel with the hearing examiner's decision was that the  
12 hearing examiner down-played the things that Innovative  
13 wanted to talk about.

14 I pointed out in my response, if you say down-played,  
15 you're conceding that it's a question of evidentiary  
16 findings, it's not an issue of law. And I came back in the  
17 reply, and I said it again on page 8, down-played. If your  
18 complaint is that the hearing examiner down-played something,  
19 you're not saying that he applied the wrong legal test.

20 As far as in the Iowa Board test, there is no doubt the  
21 hearing examiner was familiar with the Iowa Board decision.  
22 He quoted it and he applied it.

23 What does it say. The Iowa Board decision says that --  
24 what happened was, '96 act was passed, FCC adopted  
25 regulations, the 8th Circuit reverse two points. Said number

1 one, FCC you erred because you put the burden on the  
2 incumbent, you got to put the burden on the competitor. We  
3 don't quarrel with that.

4 Number two, they have, the FCC said, hearing examiner,  
5 when you're judging economic burden, you can't look at the  
6 cost, inevitable cost of interconnection that are going to  
7 exist whether the rural exemption is waived or not. In fact,  
8 you can't even look at the incremental cost that would exist  
9 with or without the rural exemption.

10 All you can look at is whether you, this specific  
11 telephone company, has some specific characteristic that  
12 would make it more burdensome on you than the normal  
13 efficient competitor.

14 And the 8th Circuit said that's too narrow, you can't  
15 ignore all the costs. You have to allow the incumbent to  
16 come to the hearing examiner and say look at all the costs  
17 we're going to experience in interconnecting, with or without  
18 the rural exemption, with it in place.

19 That's exactly what this hearing examiner did. In fact,  
20 he rebuked Innovative for employing the wrong test, saying  
21 the only test is whether the impact was substantial or  
22 significant.

23 Innovative also can't dispute that when the hearing  
24 examiner is doing his job, when he did his job, he did the  
25 right thing. He recognized that undue was a value term. And



1 you can't say something is undue without applying it to some  
2 standard of appropriateness.

3 And he looked at three things. He looked at the  
4 financial health of Innovative; he said it's a healthy  
5 company, with lots of retained earnings; he found it was  
6 capable of sustaining the burden of competitive entry.

7 Number two, he looked at the investment that would be  
8 required inevitably under any competitive scenario, with or  
9 without rural exemption. He said, when you look at that,  
10 compare those two things, incremental cost, interconnection,  
11 it's not undue.

12 But most notoriously, he looked at the -- what  
13 Innovative did when it implemented its customer management  
14 system. And Innovative baldly admitted that it was designed  
15 to thwart access.

16 And, again, I just don't think we can talk about what  
17 the hearing examiner did without reading from his decision.

18 I'm sorry, your Honor, I've written down the wrong page  
19 here in my brief.

20 Here it is. In 1998, after this act was passed, and  
21 after Innovative knew that it was going to have to  
22 accommodate access, whether with or without the rural  
23 exemption, it adopted a new customer management service  
24 system. Spent eight million dollars on it, it was designed  
25 to keep out people exactly like Wireless World.

1           The hearing examiner said, the hearing examiner was  
2 troubled by two facts, first, the preferential treatment that  
3 Innovative is apparently willing to accord an affiliated  
4 business unit, and that is because it designed the system so  
5 only it phone subsidiary and other subsidiaries can get  
6 access, not other competitors.

7           And the fact a commitment was made to the information in  
8 order for a fulfillment system that lacks any apparent means  
9 of supporting multiple use or organization, organizations.  
10 The prudence of adopting any customer information system with  
11 such apparent inflexibility as suggested, must certainly  
12 question as well it constitutes a violation of 47 U.S.C.  
13 Section 251-A2. The hearing examiner suggested Innovative,  
14 in fact, violated the law when it spent eight million dollars  
15 on this system.

16           It said -- and this was the third standard that was  
17 used, Judge, whether the burden was undue or not. The  
18 hearing examiner said, that he noted with interest Innovative  
19 has demonstrated its willingness to underline the significant  
20 investment to modify methods of operation, when it serves its  
21 interests to do so, without concerns for the economic burden  
22 that it might engender. The commitment to so-called ICMS  
23 illustrates the fact that Innovative was willing to bear a  
24 rather significant financial burden and risk when it finds a  
25 sufficient reason to do so.

1           He goes on to say that, no evidence has been produced in  
2 this proceeding to suggest that the ICMS decision emanated  
3 from a critical need of the telephone operations, and no  
4 suggestion has been made that's been introduced to comply  
5 with any of the regulatory or statutory requirements pursuant  
6 to the telecommunication act.

7           Further down he goes on to say, equally disturbing is  
8 the fact Innovative acknowledges that the ICMS system cannot  
9 be modified to provide shared entry with CLEC, that's what  
10 Wireless World is, and would be rendered effectively useless  
11 if the exemption were lifted.

12          It appears to the hearing examiner that the differences  
13 in what Innovative concludes to be an economic burden, can be  
14 seen clearly in the interest of respective competitors is  
15 mapped against the interest of the affiliated business  
16 units.

17          So the hearing examiner didn't misapply the statutory  
18 interests, he applied it perfectly. He looked at what  
19 Innovative was willing to spend to keep out competitors, and  
20 said compared to what it would cost to accommodate  
21 competitors, the burden is not going to be undue. That's a  
22 substantial evidence question, and it should be sustained.

23          Now, the same is true for Innovative's cross-appeal  
24 about discounts, and exactly what the hearing examiner said.  
25 Again, it was interesting that attorney Vogt didn't read what

1 the hearing examiner decided. Instead he only characterized  
2 his decision.

3 What happened was, your Honor, after the May decision  
4 came down, and the hearing examiner said, Innovative, you're  
5 going to keep your rural exemption in place, Wireless World  
6 does not have a federal right to discounts, can't come in as  
7 a matter of federal law and demand you give it the discounts  
8 and access to individual network elements.

9 But we've heard the evidence, and we've heard Wireless  
10 World say that without bulk discounts, it can't compete. So  
11 Innovative, I want you to go and try to group Wireless World,  
12 and have some sort of discounts, volume discounts,  
13 incorporated into this interconnection agreement so that it  
14 can compete.

15 Innovative refused to do that. It said Wireless World,  
16 if you want to buy five hundred lines, you got to pay five  
17 hundred times the rack rate, we're not going to give you any  
18 discounts, even though we saved money by having you service  
19 our customers.

20 This is what the hearing examiner said; Innovative makes  
21 no effort either in its brief or reply brief to rebut  
22 Wireless World's assertion regarding Wireless World's  
23 competitive disadvantage without discounts; Innovative  
24 chooses instead to rely on technical arguments related to  
25 rural exemption, and its concern for abuse by Wireless World,

1 and any rights to a discount that it may get.

2 This comes in spite of caution given to Innovative,  
3 given to Innovative by the hearing examiner of reading too  
4 much into the extension of the rural exemption rights and  
5 entitlements.

6 And then the hearing examiner goes on to criticize  
7 Innovative on this point, this critical point that they're  
8 appealing, for giving, quote, no credence to the hearing  
9 examiner's advice and for having chosen instead to rely on a  
10 narrow interpretation of the decision.

11 And this is the critical point, he explains exactly why  
12 the relief that he is suggesting that the commission enter,  
13 would not be inconsistent with federal law, would not be  
14 preempted as attorney Vogt claims it is.

15 It is the opinion of this hearing examiner that the  
16 rural company classification, accorded Innovative Telephone,  
17 by the telecommunication act, and separately sustained by  
18 this hearing examiner, does little more than limit Wireless  
19 World's legal rights under federal law, to require Innovative  
20 to provide a price and volume discount. The exemption clause  
21 upon which Innovative argues against offering price and  
22 volume discounts does not expressly limit the right of  
23 Wireless World to seek such discounts from a rural telephone  
24 company, or the ability for Innovative to grant such a  
25 concession without jeopardizing its rural status.

1           And he suggested to the commission, that when the  
2   interconnection agreement was entered, that it should  
3   incorporate such discounts in the interconnection agreement,  
4   but you know what, those provisions were never inserted. We  
5   couldn't agree on them, and because of that Wireless World  
6   won't sign the agreement.

7           So, that's why this whole cross-appeal is unright. How  
8   can there be standing, or how can there even be  
9   constitutional jurisdiction to consider a discount which was  
10   never implemented and never enforced. This was the classic  
11   case of pre-enforcement challenge to an administrative  
12   action.

13          And just looking at this from a broader perspective,  
14   your Honor, this whole notion that there is a subsidy, and --  
15   the notion that there is a subsidy that has to be sustained,  
16   the evidence in the hearing was to the contrary.

17          If you look on page 57 of my initial brief, you'll see  
18   what Innovative -- and this was another very clever  
19   rhetorical maneuver successfully pulled off; it said we  
20   charge 18 dollar and 75 cents for residential line, our cost  
21   of 53 dollars. Therefore, there is a huge loss there.

22          And the hearing examiner, you got to protect our  
23   monopoly if we're going to keep sustaining that loss; we have  
24   to have a trove of monopoly profits from the business side,  
25   to fund the difference between 53 dollars in costs and 83

1 dollars that we get in exchange.

2 But as we pointed out to the hearing examiner, and,  
3 again, in our brief, the initial brief on page 57, the  
4 undisputed evidence in the proceeding was that when you count  
5 all the revenues that Innovative gets, it gets a trove of  
6 funds from the universal service funds, it gets call waiting  
7 and other ancillary services from these lines; when you look  
8 at that, what they're actually getting is 71 dollars and 80  
9 cents per line, not 53. So, the whole factual premise of  
10 their argument is wrong.

11 That's our case, Judge. The hearing examiner didn't do  
12 what they're supposed to do. That's why we have federal  
13 courts. We ask you to either remand this with instructions  
14 to waive the rural exemption, or in the alternative, at a  
15 minimum, remand it for further findings under the Section 254  
16 issue.

17 THE COURT: In any event, you want it remanded.

18 MR. DODSON: Yes, your Honor.

19 THE COURT: Mr. Vogt?

20 MR. VOGT: I will be very brief, your Honor. I'm not  
21 going to repeat anything that I said before. There were some  
22 new issues that Mr. Dodson didn't raise in his original  
23 presentation that I think need responding to.

24 He cites to a discussion of the hearing examiner on page  
25 29 of the one of the decisions. That was the early summer

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C E R T I F I C A T E

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I, Francis J. Gable, Official Court Reporter for  
the United States District Court for the District of New  
Jersey, and Certified Shorthand Reporter, do hereby certify  
that the foregoing is a true and accurate transcription of my  
original stenographic notes to the best of my ability of the  
matter hereinbefore set forth.

13

14

15



---

16

Francis J. Gable

17

Certified Shorthand Reporter

18

Registered Merit Reporter

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Official U. S. Reporter

20

N. J. Certificate No. XI-01647

21

22

23 DATE: October 28, 2004

24

25



# **EXHIBIT 6**



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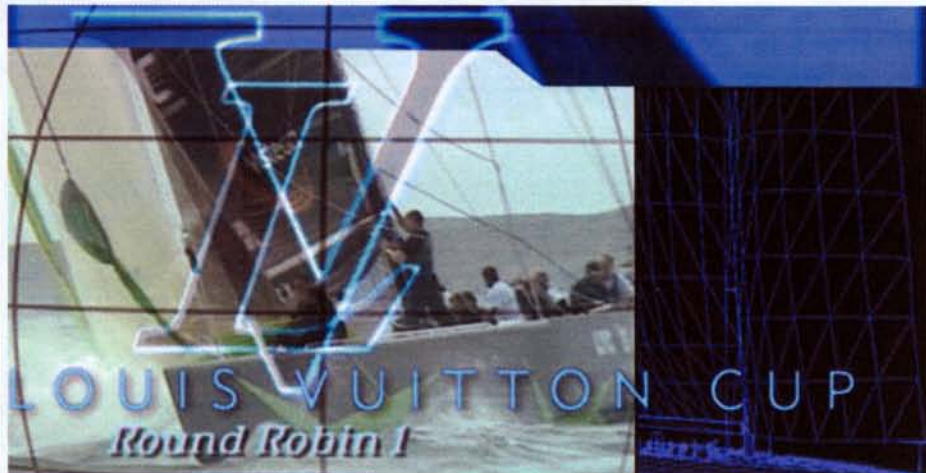
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Choice Communications, LLC brings the best in television, Internet service and wireless devices to the U.S. Virgin Islands. Choice Communications is a new company, created through the merger of VI Access, Cobex, Wireless World and Antilles Digital Television.

Choice Communications is the largest Internet Service Provider (ISP) in the U.S. Virgin Islands. It also provides paging, SMR trunked radio, and wireless digital television services via MMDS—a radio based television transmission.

The Acting CEO and Vice President of Technology and Engineering for Choice Communications is Richard A. Hanscom, Sr., who has 40 years of experience in the telecommunications industry. Mr. Hanscom joined ITT in 1974, and was working at VITELCO divisions when the Company acquired it in 1987, and has held various management positions with the Company since that time. Most recently Mr. Hanscom was President of VITELCOM, Inc. a CPE vendor owned by the Company prior to its division in 1998. He has a degree in Electrical Engineering from Rochester Institute of Technology.

Choice Communications is a wholly owned subsidiary of ATN, Atlantic Tele-Network. ([AMEX: ANK](#))

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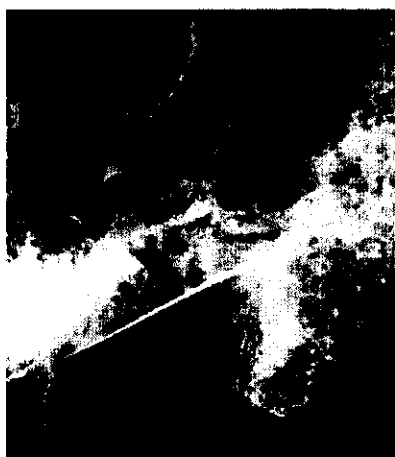
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| Level       | Speed   | Monthly charge: |
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| Squall      | 256Kbps | \$199/month     |
| Hurricane   | 384Kbps | \$249/month     |
| Tsunami     | 512Kbps | \$349/month     |

Installations are \$495.

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**Q: How does it work?**

**A:** We provide wireless broadband internet through an antenna connection between your home or business and one of our transmission sites. The antenna is small (12 inches by 12 inches) and installed on your roof, usually. Once you fill out the request form, we will send an installation engineer to your home or business to see if you qualify for high-speed service.

**Q: How do I qualify?**

**A:** If you have line of sight to one of our servicing locations (a tower or point of presence), you probably qualify for service! Our installation engineer will come to your location and perform a FREE site survey and let you know if you qualify.

**Q: What if I live in a condominium or area that has a Home Owner's Association, and they won't let me hang an antenna on my roof?**

**A:** FCC laws prohibit the impairment of installations of dishes 1 meter or less in size; therefore, you are protected as long as you have exclusive access to the area the antenna is being installed (for example, patio, deck, roof easement, balcony, etc.) If you have any problems, please let us know, and we will be happy to work with you and your community association.

**Q: What is included?**

**A:** You get quality high-speed internet, as well as 7 surfVI email addresses (ex: username@surfvi.com) and 10M of storage.

**Q: How much does it cost?**

**A:** We offer packages to suit every need. See the list of speeds on the left side of this page. All installations require a one-time installation fee of \$495, due at the completion of installation.

**Q: What is the installation fee for?**

**A:** That covers the installation, positioning, and configuration of the antenna at your home or business. It's a one-time fee.

**Q: What are the other costs?**

**A:** There are none! You just pay for installation and monthly service charge at the rate you choose. No hidden charges, no local loop charges. What you see is what you get!

**Q: What if I want 192Kbps (residential speed) for my business?**



We also offer custom solutions for multi-megabit and multi-point solutions. Please call us at 774-5780 or fill out the **request form** to learn more.

**A:** Residential pricing and product offering are for residences only and cannot be installed at commercial (business) locations.

**Q:** What if I want faster speed at my residence? I really love the Internet, and I want a 512kbps link at my house!

**A:** No problem! As long as you qualify for service, we can deliver whatever speed you need. Just fill out the **request form** and we'll get an installation engineer to your location right away!



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### Broadband Services

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# EXHIBIT 8

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# Innovative opens 'one-stop shop' in Estate Tutu

Move consolidates companies' payment and customer service operations in one central location

By TIM FIELDS  
Daily News Staff

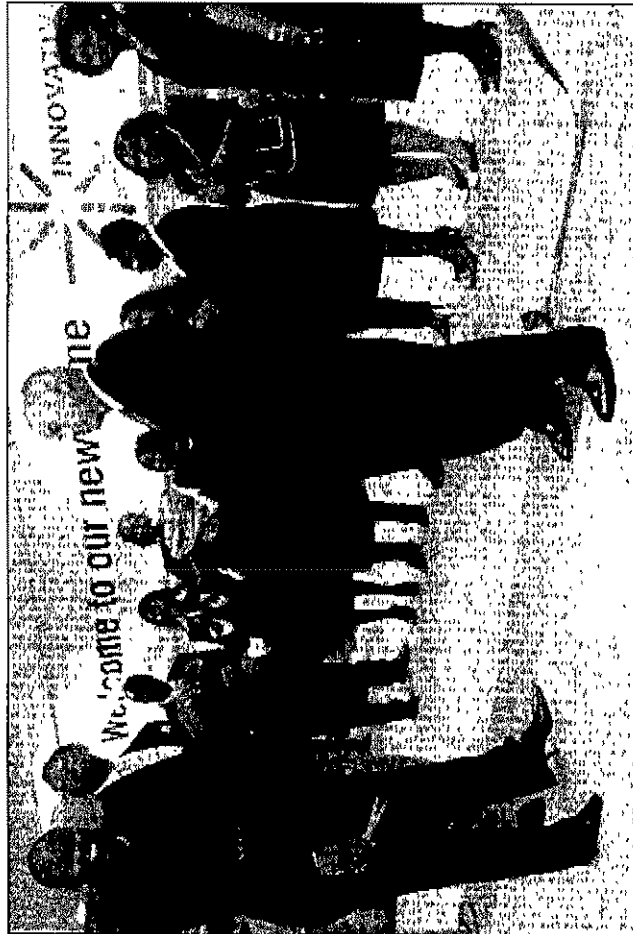
ST. THOMAS — Innovative opened its new 45,000-square-foot customer service center on Monday, consolidating its St. Thomas operations in Estate Tutu.

"This is more centrally located, based on population, and it has greater access from many roads," Innovative Telephone President and Chief Executive Officer David Sharp said. "And we have parking, parking, parking. This is a busy place."

The new two-story office, which is above Office Max across the parking lot from Tutu Park Mall, combines Innovative's customer service and payment centers for its company's divisions: Innovative Cable TV, Innovative Telephone, Innovative Wireless, Innovative Long Distance and Innovative PowerNet.

For years, Innovative operated customer service offices out of two buildings, totaling 29,000 square feet, at Belijen Place on the waterfront. Bills were paid at separate offices. "We had people scattered around the island, and this office completes our one-stop-shop concept we've had for years," Sharp said.

Innovative spent weeks cross-training its customer service employees, who now will be working in the same location, Sharp said. "One person can handle it from telephone, wireless, cable — everything," he said. Innovative consolidated its operations on



Daily News Photo by SEAN MCCOY

Innovative Telephone President and Chief Executive Officer David Sharp, right, ICC Senior Vice President Sam Ebbesen, center, and ICC Business Officer Director Jennifer Matarangas-King on Monday at the ribbon-cutting ceremony at the customer service center in Tutu.

St. Croix in 2000 and on St. John last year. The company's two buildings at Belijen Place are for sale, but TV2's offices and studio will remain there, officials said.

Innovative customer Lydia Berkeley stopped in to see the new office and said she liked what she saw. "It is very convenient and there is ample

This is more centrally located, based on population, and it has greater access from many roads. And we have parking, parking, parking. This is a busy place.

— Innovative Telephone President and Chief Executive Officer David Sharp

parking — that's very, very essential," she said.

Laurizene Richards, a custodian at Innovative's new offices, said, "You can easily get a safari, do your shopping and pay bills."

Innovative's payment windows are open Monday through Friday from 7:30 a.m. to 5 p.m. and Saturday from 8 a.m. to noon.

Customer service offices are open Monday through Friday from 8:30 a.m. to 4:30 p.m.

Innovative is a subsidiary of Innovative Communication Corp., which is headquartered on St. Croix and is the parent company of a number of companies in the U.S. and British Virgin Islands, St. Maarten, Guadeloupe, Martinique and France. Its media holdings in the territory include TV2 and The Daily News.

May 17, 2004

# Business Monday

## High-tech telecom services ahead for St. John

Innovative Telephone begins projects worth \$5 million to upgrade and expand infrastructure and improve availability

BY TIM FIELDS  
Daily News Staff

ST. JOHN — Innovative Telephone has launched six simultaneous projects across St. John to improve and expand the island's telecommunication services.

"We're very excited about what we're doing here. We want to transform St. John from our most problematic area to the best," Innovative President and Chief Executive Officer David Sharp said Friday to a St. John Rotary Club audience.

Innovative's projects on St. John aim to satisfy the growing number of basic phone service customers as well as residents' interests in a wider range of services such as high-speed Internet connections, he said.

Innovative has made St. John a priority in the telephone company's overall plan to improve telecommunications territorywide, Sharp said.

In March, Innovative announced it will spend \$100 million during the next five years to improve telecommunications in the territory. Innovative's five-year plan includes laying fiberoptic cables, installing more lines underground and upgrading the network to offer more customers access to high-

**We're very excited about what we're doing here. We want to transform St. John from our most problematic area to the best.**

— David Sharp,  
Innovative Telephone president and chief executive officer

tech services such as DSL lines.

Innovative is spending \$5 million on the St. John improvements. Currently, much of St. John has limited access to some services because all telecommunications data is transmitted from Innovative's central office in Pastory. The farther a customer is from that office, the less data can be transmitted through the lines.

Innovative's improvements will eliminate much of that problem by expanding and upgrading outside plant facilities in Caneel Bay, Chocolate Hole, Gift Hill and the North Shore. Data will travel shorter distances from those local sites to customers, thus reducing the time it takes for data to travel through the lines and supporting more high-tech services.

Innovative expects to finish the projects on a quick timetable: the North Shore by August, Caneel Bay by September, Gift Hill by October and Chocolate Hole by

September 2005.

"We are being rather aggressive with our schedules, but we want to get it done," Sharp said.

By October, Innovative also will install more telephone lines out of the Coral Bay central office on the East End, he said. DSL lines could be available as early as July.

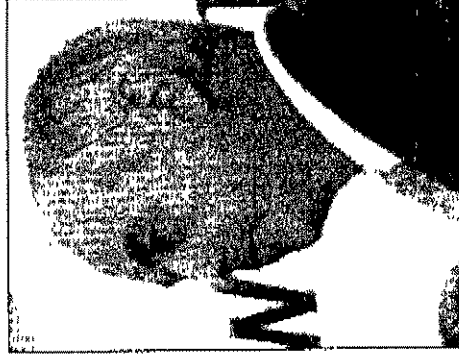
Innovative also is laying underground fiberoptic cable from Frank Bay to the Pastory central office, Sharp said.

Laying the cable underground will cost Innovative \$1 million, he said.

Innovative is negotiating to link that line with the V.I. Water and Power Authority's underwater fiberoptic cable that runs between St. John and St. Thomas.

Fiberoptic lines connecting the islands will serve as backup systems ensuring St. John communications can better withstand a natural disaster or other emergency.

Currently, all interisland



David Sharp

telecommunications are transmitted to St. John by digital microwave signals broadcast from transmission towers, which are vulnerable to hurricanes.

At the Rotary Club meeting, resident Craig Barsinger said he was impressed by Innovative's plans to improve the island's telecommunications infrastructure.

"There are areas where there aren't enough lines available, and people wait for months or years for a land line," he said.

Barsinger said he believes Innovative understands that St. John is in a growth mode.

"They will take care of us today with these projects, but more importantly they are preparing us for the next 10 to 15 years. Their plan is forward-looking and not just patchwork," he said.

Architect Dong White said he has been waiting three years to get telephone service at his home in Privateer Bay, but by the end of the year he may be connected.

"Getting more lines on St. John is very important because it's one of the fastest-growing islands in the territory," White said.

St. John resident Meredith Small said, "It can only be good for us."

Sharp said Innovative is in the process of getting bids on two other major projects, one on St. Thomas and one on St. Croix, but he did not describe those projects in further detail.

He told The Daily News in March that Innovative plans to lay an underwater fiberoptic cable between St. Thomas and St. Croix.

Innovative is owned by Innovative Communication Corp., which is headquartered on St. Croix. ICC is the parent company of a number of companies in the U.S. and British Virgin Islands, St. Maarten, Guadeloupe, Martinique and France. Its media holdings in the territory include TV2 and The Virgin Islands Daily News.

# **EXHIBIT 9**



GOVERNMENT OF THE VIRGIN ISLANDS  
OF THE UNITED STATES

PUBLIC SERVICES COMMISSION

IN RE: )  
 )  
REQUESTS OF CHOICE COMMUNICATIONS, LLC ) PSC DOCKET No. 548  
\_\_\_\_\_ )

**Choice Communications LLC Responses to  
Staff Interrogatories (Track 1)**

Choice Communications LLC ("Choice"), through its attorneys, respectfully submits its answers to Staff's Interrogatories (Track 1) in the above-captioned proceeding.

ETCC-1: Provide a copy of all federal and territorial operating licenses granted to Choice Communications or to which Choice Communications is a successor and/or assign. Indicate any changes to the current licenses that are envisioned by Choice Communications and/or its corporate parent.

Response: Choice holds licenses and authorizations as follows:

- We have a series of FCC licenses, consisting of MMDS licenses in the E, F and H blocks.
- In addition, we are leasing the B and G licenses from an entity named SHEKENIAH. These are Instructional Fixed Television Service licenses.
- In addition, we have the MMDS 1 and 2A licenses, which are the return channels.
- We also have a series of licenses in the 400 MHZ for paging, including a license for site to site links.
- We have a fifth set of wireless licenses designated SMR in the 800 MHZ band.
- We have LMDS licenses, specifically the E block.
- We have microwave licenses for point to point in the 2 and 6 GHz band.

Copies of our FCC licenses are available on the FCC web site, if actual copies are desired, at [www.fcc.gov](http://www.fcc.gov). These licenses are recorded under Wireless World, LLC. Petitioner will make printed copies available to inspect if desired.

In addition, we have authorization to operate under

- FCC Public Notice, *International Authorizations Granted*, 18 FCC Rcd 1857 (2003) (Attachment 1); and
- 47 C.F.R. § 63.01 (Attachment 2).

On February 13, 2003, the Federal Communications Commission (“FCC”) granted Choice an International Telecommunications Certificate to provide Global or Limited Global Facilities-based and resale services pursuant to section 214 of the Communications Act of 1934, as amended (the “Act”). *See FCC Public Notice*, *International Authorizations Granted*, 18 FCC Rcd 1857 (2003) (provided as Attachment 1). The FCC also has granted all carriers, including Choice, blanket authority, pursuant to section 214 of the Act, to provide domestic interstate telecommunications services. *See* 47 C.F.R. § 63.01; *see also* Choice’s Response to ETCC-2.

ETCC-2: Provide a copy of any federal statute and/or FCC decision that authorizes Choice Communications currently operates in the United States Virgin Islands.

Response: Choice attaches the following documents:

- FCC Public Notice, *International Authorizations Granted*, 18 FCC Rcd 1857 (2003) (Attachment 1);
- 47 U.S.C. § 63.01 (Attachment 2);
- 47 C.F.R. § 214 (Attachment 3); and
- *Implementation of Section 402(b)(2)(A) of the Telecommunications Act of 1996, Petition for Forbearance of the Independent Telephone & Telecommunications Alliance, Report and Order in CC Docket No. 97-11, Second Memorandum Opinion and Order in AAD File No. 98-43, 14 FCC Rcd 11364 (1999) (Attachment 4).*

The U.S. Virgin Islands Code does not require telecommunications carriers to obtain a certificate of public convenience and necessity from the U.S. Virgin Islands Public Services Commission as a prerequisite to providing telecommunications services to consumers throughout the U.S. Virgin Islands. While Title 30 VIC Chapter 1, read literally, might be construed to cover all telecommunications services, that portion of the code has been consistently interpreted to confer only jurisdiction to regulate rates and services of the franchised telephone company, and not over entities operating under Federal Statutory authority such as Choice.

Choice has the authority to provide domestic interstate services throughout the United States and its territories, including the U.S. Virgin Islands, pursuant to section 63.01 of the FCC's rules, and to provide international services pursuant to the international authorization granted by the FCC, as discussed below. Pursuant to section 214 of the Act, telecommunications carriers are required to obtain a certificate of public convenience and necessity from the FCC prior to constructing, acquiring, operating, or engaging in transmission over lines of communication. *See* 47 U.S.C. § 214(a). In 1999, the FCC adopted a rule that automatically

grants all carriers blanket authority under section 214 of the Act to provide domestic interstate services and to construct, acquire, or operate any domestic transmission line. *See* 47 C.F.R. § 63.01 (stating in pertinent part that any “party that would be a domestic interstate communications common carrier is authorized to provide domestic interstate services to any point and to construct or operate any domestic transmission line...”); *see also Implementation of Section 402(b)(2)(A) of the Telecommunications Act of 1996, Petition for Forbearance of the Independent Telephone & Telecommunications Alliance, Report and Order in CC Docket No. 97-11 and Second Memorandum Opinion and Order in AAD File No. 98-43*, 14 FCC Rcd 11364, 11372-75, ¶¶ 12-18 (1999) (implementing section 63.01 of the FCC’s rules). The FCC does not issue individual certificates of public convenience and necessity for the purposes of providing domestic interstate telecommunications services.

Carriers still are required to obtain authority from the FCC prior to providing international telecommunications services. On February 13, 2003, the FCC granted Choice an International Telecommunications Certificate to provide Global or Limited Global Facilities-based and resale services pursuant to section 214. *See FCC Public Notice, International Authorizations Granted*, 18 FCC Rcd 1857 (2003) (provided as Attachment 1).

ETCC-3: Provide a copy of any federal and/or territorial statutes upon which Choice predicates its petition in this proceeding for ETC status in the United States Virgin Islands.

Response: Choice attaches a copy of the following statutes upon which it predicates its petition for designation as an ETC:

- 47 U.S.C. § 214(e); and
- 47 U.S.C. § 254(e).

Section 214(e) of the Act, entitled “Provision of Universal Service,” identifies the criteria for eligibility of universal service funds and the procedures for state commissions to designate carriers as ETCs. Section 254(e) of the Act cross-references section 214(e) of the Act, and states that “an eligible telecommunications carrier designated under section 214(e) shall be eligible to receive Federal universal service support.”

Choice identifies the FCC rules and orders that implement these provisions of the Act in our response to ETCC-3(b).

ETCC-3(b):<sup>1</sup> Provide a copy of any federal, state and/or territorial court or FCC opinion that supports Choice Communications claim of eligibility to seek ETC status.

Response: Choice attaches the following documents which support its claim of eligibility to seek ETC status, each of which is discussed in response to ETCC-4:

- 47 C.F.R. § 54.101 (Attachment 6);
- 47 C.F.R. § 54.201 (Attachment 7);
- *Federal-State Joint Board on Universal Service, Report and Order, 12 FCC Rcd 8776 (1997) (Attachment 8)*;<sup>2</sup>
- *Procedures for FCC Designation of Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act, Public Notice, 12 FCC Rcd 22947 (1998) (Attachment 9)*;
- *Federal-State Joint Board on Universal Service; Western Wireless Corporation Petition for Preemption of an Order of the South Dakota Public Utilities Commission, Declaratory Ruling, 15 FCC Rcd 15168 (2000) (Attachment 10)*;
- *Federal-State Joint Board on Universal Service; IT&E Overseas, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the Territory of Guam, Memorandum Opinion and Order, 17 FCC Rcd 10620 (2002) (Attachment 11)*; and
- *Petition of the State Independent Alliance and the Independent Telecommunications Group for a Declaratory Ruling that the Basic Universal Service Offering Provided by Western Wireless in Kansas is Subject to Regulation as Local Exchange Service, Memorandum Opinion and Order, 17 FCC Rcd 14802 (2002)*.

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<sup>1</sup> The Staff Interrogatories (Track 1) contained two interrogatories numbered ETCC-3. For simplicity, Choice has referred to the second ETCC-3 as ETCC-3(b).

<sup>2</sup> Due to the length of the order and the variety of issues addressed therein, Choice has provided only those sections of the order relevant to Choice's petition for designation as an ETC.

ETCC-4: Indicate whether Choice Communications satisfies the eligibility requirements set forth in 47 U.S.C. 214(e). Explain any response.

Response: Choice satisfies the eligibility requirements set forth in section 214(e) of the Act. Pursuant to section 214(e)(1) of the Act, to obtain universal service support a common carrier designated as an ETC is required (1) to offer the services supported by the universal service support mechanisms either using its own facilities or through a combination of its own facilities and the resale of another carrier's services, and (2) to advertise the availability of these services "using media of general distribution." 47 U.S.C. § 214(e)(1); *see also* 47 C.F.R. 54.201(d). The FCC has designated the following services for support: single-party service;<sup>3</sup> voice grade access to the public switched network; Dual Tone Multifrequency (DTMF) signaling or its functional equivalent; access to emergency services; access to operator services; access to interexchange service; access to directory assistance; and toll limitation for qualifying low-income consumers. *See Procedures for FCC Designation of Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act, Public Notice*, 12 FCC Rcd 22947, 22948 n.5 (1997) (provided as Attachment 9); *see also Federal-State Joint Board on Universal Service, Report and Order*, 12 FCC Rcd 8776, 8807-25, ¶¶ 56-87 (1997) (describing each of the supported services in detail) ("*Report and Order*"); *see also* 47 C.F.R. § 54.101(a) (listing each of the supported services) (provided as Attachment 6).

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<sup>3</sup> The FCC has stated that to the extent that wireless carriers use shared spectrum among users to provide service that they "offer the equivalent of single-party service when they offer a dedicated message path for the length of a user's particular transaction." *Federal-State Board on Universal Service, Report and Order*, 12 FCC Rcd at 8810, ¶ 62 (relevant portions of the *Report and Order* are provided as Attachment 8). The FCC does not require wireless providers to offer a single channel dedicated to a particular user at all times. *See id.*

Choice currently provides telecommunications services to consumers in the U.S. Virgin Islands, including single-party service and specialized mobile radio services. The FCC does not require carriers, such as Choice, to provide all of the supported services prior to being designated as an ETC. Indeed, the FCC repeatedly has emphasized that requiring carriers to provide the supported services throughout the service area prior to designation as an ETC has the effect of prohibiting competitive entry. *See Federal-State Joint Board on Universal Service, Western Wireless Corporation Petition for Preemption of an Order of the South Dakota Public Utilities Commission, Declaratory Ruling*, 15 FCC Rcd 15168, 15173, ¶ 12 (2000) (provided as Attachment 10). In reaching this conclusion, the FCC stated that “[n]o competitor would ever reasonably be expected to enter a high-cost market and compete against an incumbent carrier that is receiving support without first knowing whether it is also eligible to receive such support.” *Id.* ¶ 13. Similarly, in the present case, absent ETC designation, since the entire U.S. Virgin Islands is a high-cost area, it is not financially prudent for Choice to offer all of the supported services prior to receiving an ETC designation. *See Choice Petition* at 1.

Moreover, in certain situations the FCC permits ETCs to obtain universal service funds even though they currently are not capable of providing all of the supported services. Specifically, an otherwise eligible carrier that does not currently provide single-party service, toll limitation service, or access to E911, may petition a state commission for permission to receive universal service support while the carrier completes the network upgrades so that it can offer these services. *See Report and Order*, 12 FCC Rcd at 8825-28, ¶¶ 88-93. In its petition, consistent with the FCC’s rules, Choice requested that it be entitled to receive universal service support while it completes the necessary upgrades to be able to provide single-party service throughout the U.S. Virgin Islands. *See Choice Petition* at 5-6.



The FCC has stated that an applicant for designation as an ETC can demonstrate “its capability and commitment to provide universal service without the actual provision of the proposed service” to the state commission through one of four mechanisms, among others:

(1) a description of the proposed service technology, as supported by appropriate submissions; (2) a demonstration of the extent to which the carrier may otherwise be providing telecommunications services within the state; (3) a description of the extent to which the carrier has entered into interconnection and resale arrangements; *or* (4) a sworn affidavit signed by a representative of the carrier to ensure compliance with the obligation to offer and advertise the supported services.<sup>4</sup>

Moreover, designating Choice as an ETC allows it to become eligible for federal universal service support; it does not mean that Choice automatically receives support. Choice will receive support only upon actually providing services to its customers.<sup>5</sup>

In the present case, although Choice does not currently provide all of the supported services, it is eligible for designation as an ETC. Choice has committed to offer and to advertise the supported services upon designation as an ETC or shortly thereafter.<sup>6</sup> In accordance with section 214(e), Choice will offer the supported services using wireless technology through a combination of its own facilities and the resale of other carriers’ facilities.<sup>7</sup>

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<sup>4</sup> *Id.* ¶ 24 (emphasis supplied).

<sup>5</sup> As discussed above, there are three exceptions to this general rule.

<sup>6</sup> See Declaration of Cornelius B. Prior ¶ 3 (attached to Choice’s petition). As noted above, Choice has requested an extension of time in which to implement single-party service. See Choice Petition at 5-6.

<sup>7</sup> See Declaration of Cornelius B. Prior ¶ 3. The FCC’s universal service rules are technology-neutral; therefore, any telecommunications carrier, including a wireless carrier, is eligible for ETC designation. See *Report and Order*, 12 FCC Rcd at 8858, ¶ 145 (stating that “any telecommunications carrier using any technology, including wireless technology, is eligible to receive universal service support if it meets the criteria under section 214(e)(1)”); see also *Petition of the State Independent Alliance and the Independent Telecommunications Group for a Declaratory Ruling that the Basic Universal Service Offering Provided by Western Wireless in Kansas is Subject to Regulation as Local Exchange Service*, Memorandum Opinion and Order, 17 FCC Rcd

Choice will offer the supported services throughout its licensed service area.<sup>8</sup> Choice's current wireless network provides the capability to offer wireless local loop, high speed Internet access, and digital telephone service to large parts of St. Thomas, St. John, and St. Croix. Choice's physical plant already houses routing equipment to support its ISP business, and it leases towers to broadcast its wireless service. In addition, Choice is negotiating with other carriers to purchase or lease additional facilities to house new equipment and to improve service reliability. Through the addition of two-way antennas, additional routing equipment, and switched access, Choice can provide all of the supported services to consumers in the U.S. Virgin Islands. Further, Choice has one resale agreement to provide service to an inhabited island in the U.S. Virgin Islands which is not served by Innovative. For the Little St. James Island residents, we provide a total of 15 lines for telephone service to that island which was not served by Innovative. We initiated this service when Innovative was not providing service to the residents of the island, without discount or mark up, in order to insure that those persons residing on the island would have telephone service.

Furthermore, Choice will advertise the availability of the supported services through media of general distribution in the U.S. Virgin Islands, including, for example, using the radio and the printed media. Choice currently advertises many of its services, including, for example, Internet, digital wireless television, high-speed Internet access, dispatch and paging services through local media, print, radio and television. Choice will use these same channels to communicate new service offerings. *See* Choice Petition at 5 (identifying current advertising).

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14802, 14816, ¶ 25 (2002) (stating that the FCC's universal service rules are technology-neutral).

<sup>8</sup> Choice's licensed service area is not identical to Innovative's study area. Therefore, as is common practice, Choice will request a waiver of the requirement to provide service throughout Innovative's study area, such that it can operate pursuant to the terms of its FCC licenses. The FCC routinely grants such requests.

Granting Choice's petition is in the public interest, because it will bring competition to the marketplace in the U.S. Virgin Islands. Currently, the incumbent LEC, Innovative, is the only ETC throughout the U.S. Virgin Islands. The FCC previously has concluded that designating an additional ETC in an area served by a rural LEC serves the public interest "by promoting competition and the provision of new technologies to consumers in high-cost and rural areas..." *Federal-State Joint Board on Universal Service, IT&E Overseas, Inc. Petition for Petition for Designation as an Eligible Telecommunications Carrier in the Territory of Guam*, 17 FCC Rcd 10620, para. 1 (2002) (provided as Attachment 11). Similarly, granting Choice's petition will bring increased choices and innovative services to customers throughout the U.S. Virgin Islands. As in the case of the residents of the small island of Little St. James, Choice has already increased the service available to Virgin Islanders in an area not served by Innovative. Granting the petition will increase the opportunities for Choice to increase this positive extension of telephone service to people and areas not fully served by the only LEC in the Virgin Islands.

ETCC-5: Provide a copy of Choice Communications plan to meet the requirements set forth in 47 U.S.C. § 254(e).

Response: Choice incorporates by reference its response to ETCC-4, which, *inter alia*, provides an overview of Choice's current wireless network and its plan to provide the supported services. Pursuant to section 254(e) of the Act, once designated as an ETC, Choice will be eligible to receive universal service support. Consistent with section 254(e), Choice will use the support that it receives solely for the provision, maintenance, and upgrading of facilities for which the support is intended.

ETCC-6: Provide a list of all telecommunications services currently provided by Choice Communications in the United States Virgin Islands. Provide a list of all telecommunications services that are currently under consideration by Choice Communications for the United States Virgin Islands.

Response: ETCC-6

Choice Communication is currently providing the following services:

- The sole Local Telephone Service to the island of Little St.James in the U.S. Virgin Islands;
- Fixed Wireless Cable TV using MMDS spectrum
- Dial-Up ISP
- Wireless DSL
- Paging
- Specialized Mobile Radio (SMR)
- E-mail hosting
- Shared Web hosting
- Managed Server
- Dedicated Server
- Domain Names and Web-mail

Additionally, the following services are currently being considered:

- Additional Local Telephone Service, including-
  - Dial tone
  - Voice grade access to the PSTN
  - Local usage
  - DTMF
  - Access to Emergency Services
  - Single party
  - Local Switching
- As part of the local service offering, the following enhanced services or features:
  - Call conference & transfer
  - Caller ID
  - Call Forwarding
  - Call Waiting
  - Voice Mail
- VoIP
- Long Distance Services-
  - 1+ PIC'ed access
  - 1010XXX
  - Leased lines

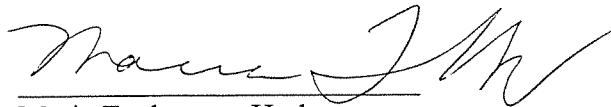
- Cellular Communications
- Off-island Connectivity
- High Speed Private Line Interconnection
- Virtual Private Line Connectivity
- Managed Services
- Shared Data Center
- IPVPNs
- FR connectivity
- ATM Connectivity
- Wi-Fi

**ETCC-7      Provide the current number of Choice Communications local exchange telephone service subscriber in the United States Virgin Islands.**

We provide the only local telephone service to all the residents of Little St. James Islands, involving fifteen lines, under a single billing to one customer.

Dated: 7/18/03

Respectfully submitted,



Maria Tankenson Hodge

Hodge & Francois

1340 Taarneberg

St. Thomas, VI 00802

340-774-6845

Fax: 776-8900

Email: hodgefran@islands.vi

VERIFICATION

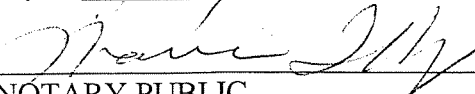
TERRITORY OF THE VIRGIN ISLANDS    )  
  ) SS:  
DIVISION OF ST. THOMAS AND ST. JOHN )

**SAMUEL SIGARTO**, after first being duly sworn, deposes and states that he has carefully read the foregoing responses to Staff Interrogatories, in his capacity as Chief Operating Officer of Choice Communications, LLC, and confirms that the foregoing are true and correct to the best of his knowledge and information.

DATED: 7/18/03

  
\_\_\_\_\_  
SAMUEL SIGARTO

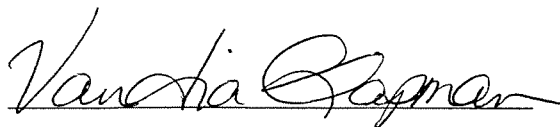
Subscribed and Sworn  
to before me this 18  
day of July, 2003

  
\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires: **Maria Hodge**  
My Commission Expires:  
May 21, 2004  
LNP - 008-00

CERTIFICATE OF SERVICE

It is hereby certified that a true and exact copy of the foregoing was sent by hand delivery to the offices of the Public Services Commission and to the Hearing Examiner, Rosalie Simmonds Ballentine, with a duplicate copy of text without exhibits sent via email to [roselaw@viaccess.net](mailto:roselaw@viaccess.net) and via telefax to 774-3766; a copy was sent by U.S. Mail, postage prepaid to Gregory J. Vogt of Wiley, Rein & Fielding LLP, Washington, D.C., with a duplicate copy of text without exhibits sent via email to [gvogt@wrf.com](mailto:gvogt@wrf.com), a copy without exhibits was sent by telefax to Julio Brady at Innovative Telephone Company, at 692-5900, with a duplicate copy including exhibits sent by U.S. mail; and a copy of text without exhibits was sent by email to Dr. Gregory Mann at [GregM@ggga.net](mailto:GregM@ggga.net), and a full copy including exhibits sent by express mail to Dr. Mann at Gorham, Gold, Greenwich & Associates, P.O. Box 23626, Overland Park, Kansas, 66283-0626, on this 18<sup>th</sup> day of July, 2003.

  
\_\_\_\_\_  
Vanda Gorman

# **EXHIBIT 10**



**GOVERNMENT OF THE VIRGIN ISLANDS  
OF THE UNITED STATES**

*Public Services Commission*

|                                    |   |                           |
|------------------------------------|---|---------------------------|
| <b>IN RE:</b>                      | ) |                           |
|                                    | ) | <b>PSC DOCKET NO. 526</b> |
| <b>WIRELESS WORLD - INNOVATIVE</b> | ) |                           |
| <b>TELEPHONE</b>                   | ) |                           |
| <b>REQUEST FOR INTERCONNECTION</b> | ) |                           |
|                                    | ) |                           |
|                                    | ) |                           |
| <hr/>                              |   |                           |

**REPORT OF THE HEARING EXAMINER**

**I. Introduction**

The Telecommunications Act of 1996 ("the Act") was instituted by the United States Congress for the purpose of providing the statutory foundation essential to broadening participation in the local exchange telecommunications market. The adoption of a new framework by Congress suggests that the American public will benefit more from greater competition than from greater regulation -- and regulatory constructs must encourage greater participation. Provisions contained within the Telecommunications Act clearly establish rights, duties and privileges accorded to all participants -- incumbent and prospective entrant -- in the pluralistic market envisioned by the Act's sponsors.

Among the many changes expressly provided by the Act is a requirement that unencumbered interconnection of facilities and equipment operated by the respective incumbent and prospective competitors be achieved and maintained in the future.<sup>1</sup> With enactment competitors to incumbent local exchange carriers were accorded for the first time a statutory right to seek interconnection and a framework to govern its provision. To ensure that its intent was not left open to misinterpretation by either regulators or other interested parties Congress went to great effort in the remaining provisions of The Act to clarify the goals it expressed in §47 USC §251(a).<sup>2</sup>

On August 24, 2000 Wireless World, L.L.C. ("Wireless" or the "prospective entrant") formally notified Innovative Telephone ("Innovative" or the "incumbent") of its interest in entering into an

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<sup>1</sup> §47 USC §251(a)(1) serves as enabling authority to mandate interconnection between networks and equipment of all telecommunications carriers -- incumbent and prospective competitor -- irrespective of their interest in doing so. A companion provision in that section - 47 USC §251(a)(2) -- ensures that the interconnection obligation introduced in §47USC251(a)(1) cannot -- now or in the future -- be avoided, withdrawn or limited by a telecommunications carrier.

<sup>2</sup> Wireless World, L.L.C. -- a wholly-owned subsidiary of Atlantic TeleNetwork ("ATN") -- maintains a Commercial Mobile Radio Service ("CMRS") license granted by the Federal Communications Commission under §47 § U.S.C. §332 and subject to rules and regulations set forth in 47 C.F.R. §20.

agreement for access to -- and use of -- Innovative's public switched network in the United States Virgin Islands<sup>1</sup> In submitting a request for interconnection Wireless World exercised the rights granted it as a telecommunications carrier and provider of telecommunications services (as defined by the Act). In its application, Wireless World set forth its intent to negotiate terms and conditions for interconnection in accordance with the provisions set forth in 47 USC §252 of the Act.<sup>2</sup> Subsequent to the August 24, 2000 request of Wireless World, negotiations were undertaken by the two parties but, as acknowledged by both parties, failed to conclude in a mutually acceptable interconnection agreement.

## **II. Roles and Responsibilities**

In addition to the duties and obligations ascribed to incumbent local exchange carriers -- and their respective competitors -- the Act specifies discrete implementation roles and responsibilities to federal, state and territorial regulatory agencies.<sup>3</sup> For matters pertaining to telecommunications carriers operating in the United States Virgin Islands under Section 47 of the United States Code the responsible agencies of record are the United States Virgin Islands Public Services Commission ("VIPSC" or "PSC").and the Federal Communications Commission ("FCC").

The Act severely proscribes the scope of the VIPSC's role in §§251 and 252 matters to a) reviewing and approving interconnection agreements, b) mediating differences that in the conduct of negotiating such agreements, and c) arbitrating any differences that cannot be resolved through either negotiation or mediation. Even more severely proscribed in the Act is the role of the FCC; §§251 and 252 accord it a meaningful role in matters of interconnection only if the responsible state agency fails to act on its assigned duties and obligations. Only at that point is the FCC permitted to enter into any negotiations or arbitration proceedings. Accordingly, the Virgin Islands Public Services Commission is the primary entity to deal with the interconnection process and related issues.

## **III. Purpose of the proceeding**

This proceeding represents the first step in the effort by the Virgin Islands Public Services Commission to fully -- and fairly -- examine claims made by each of the respective parties in the context of negotiations between Innovative Telephone and Wireless World of their previously referenced August 24, 2000 request for interconnection. Specifically, at issue in this hearing are matters related to a formal complaint against Wireless World,LLC, Innovative Telephone f/k/a Virgin Island Telephone Corp. filed with the Virgin Islands Public Services Commission on January 30, 2001 alleging violations of the good faith negotiation requirements and of the

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<sup>1</sup>Receipt of a formal request for interconnection is acknowledged by Innovative in the Formal Complaint filed by Innovative Telephone with th Virgin Islands Public Services Commission on January 31, 2001.

<sup>2</sup>47USC§252 prescribes use of a uniform set of procedures for negotiation, arbitration, and approval for all interconnection agreements. The specific processes and "triggers" are fullyailed in this section of the Act.

<sup>3</sup> By virtue of 47 U.S.C. §153(40) and (41, the Virgin Islands Public Services Commission is deemed a "State Commission."

### **3. consistency with prescribed universal service**

The Telecommunications Act of 1996 requires any Commission presented with a request to remove the rural telephone exemption of an Incumbent Local Exchange Carrier to ensure that its actions are consistent with the commitment Congress to preserving Universal Service. Specifically, the concern of Congress centers on the impact on subscribership that might be expected as a result of providing broader participation in a small, insular and/or rural market.

In this proceeding Wireless World suggests that its proposal would engender minimal effect on the access to – and use – of telecommunications services in the Virgin Islands. It suggests that any negative revenue impact experienced by Innovative as a result of broader participation can be easily mitigated by contributions to Innovative Telephone from other business units owned and operated by Innovative's corporate parent. As discussed in the previous section it would appear that cross-subsidization is not a permissible – let alone a preferable policy that this Commission should adopt. Accordingly, the Hearing Examiner was compelled to conclude that Wireless World's proposal will have a detrimental effect upon the financial condition of Innovative sufficient that it will be forced to seek rate relief from this Commission at some point in the future.

This Commission can only speculate on the scope and scale of any such relief initiative but it is reasonable to assume that it will entail rate rebalancing. In this proceeding, Innovative has attested to the fact that its business customers generate substantially higher revenue per access line than their residential counterparts and will likely be a focal point for competitive activity on the part of Wireless World. Accordingly, it is reasonable to presume that Innovative will respond with some effort to rebalance rates between residential and business customers to better reflect the revenues and costs of serving each of the respective groups. If subsequently approved by this agency such rate rebalancing may well result in an increase in local residential rates or the imposition of a subscriber line charge; in either case, an increase in the cost of basic local exchange service to the residential users of the Virgin Islands.

Innovative has asserted that the current subscribership to local exchange telephone service in the Virgin Islands is substantially below the national average of the United States. It attributes this low penetration, in part, to the relatively low income levels of the Virgin Islands. It further maintains that any effort to increase residential prices to levels necessary to offset any projected loss from broader interconnection could have the effect of reducing its subscribership below current levels as people find telecommunications services less affordable.

In response to Innovative's assertions Wireless World suggested that there is no correlation between the price of telecommunications services and subscribership. Wireless World's witness even cited several instances where price increases of local service were accompanied by an increase in subscribership. While such examples are impressive, the Hearing Examiner finds it difficult to conclude that such phenomena are anything other than coincidental and do not constitute a material change to the generally accepted economic principles of price:demand that govern virtually all commercial exchanges. Wireless World offered nothing in its submissions to suggest that the local exchange telephone market is subject to a fundamentally different economic regime than the balance of the private sector. Unlike "a rising tide that will guarantee all boats

rise," an increase in the price for local exchange telephone service will not guarantee that subscribership levels will rise correspondingly.

It has been further suggested in this proceeding by Wireless World that any financial impact that might be realized by Innovative as a result of broader competition will be mitigated by the efforts of the federal joint board on Universal Service and the federal Universal Service Fund ("USF"). Innovative acknowledged in its testimony that it currently receives support from the USF but that such support is "portable" and moves with the subscriber to the Eligible Telecommunications Carrier ("ETC") from whom the subscriber solicits local exchange service. Innovative acknowledges that Wireless World does not currently hold ETC status but there is nothing that would prevent it from seeking such authority and becoming eligible for USF support. Under current rules and regulations Innovative would have its USF support reduced in direct proportion to its losses to Wireless World. The consequent effect would be a growing deficiency in support from the federal USF and increasing pressure on the Virgin Islands Public Services Commission to accede to requests by Innovative for price increases in local service.

Some indication was given in this proceeding that the Joint Federal-State Board on Universal Service is currently engaged in examining this issue (amongst others) and seeking means to equitably address the subject. The recommendations that might be offered by the Board are wholly speculative at this time and there is no assurance that any actions will be taken which correct the current deficiencies of the plan. Therefore, the Hearing Examiner must assume that no changes to USF policies will be made in the foreseeable future and the current methodologies used in determining USF payments will be continued.

Without substantive changes in the USF not certain and the possibility that rate relief or rebalancing may well be required, it is difficult for this Hearing Examiner to conclude anything other than the fact that broader interconnection by Wireless World will have a detrimental – but not quantified – effect upon the achievement of universal service in the Virgin Islands. However, it is readily apparent to the Hearing Examiner that the magnitude of any increase – and the corresponding threat that presents to universal service -- is directly proportional to the expenditure levels required of Innovative to provide broader interconnection to Wireless World. It is also apparent that any impediment to recovering such costs from CLECs through usage-based fees or direct payments would only serve to exacerbate Innovative's financial condition and dictate still more petitions for relief from this Commission.<sup>9</sup> That, in the opinion of this Hearing Examiner, is precisely the concern held by Congress when it established the tri-partite test contained in 47 U.S.C. § 251(f)(1)(B) and the concern which remains with this Hearing Examiner.

After reviewing all of the evidence and argument presented by the parties on this matter the Hearing Examiner must conclude that interconnection in the manner proposed by Wireless World under 47 U.S.C. § 251(c) presents a potential – but not quantified – threat to the universal service principles set forth in 47 U.S.C. § 254(b). The Hearing Examiner is of the opinion that Wireless

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<sup>9</sup> Despite the expressions of commitment to the telecommunications market made by Wireless World in this proceeding the company remains free to enter, participate and/or withdraw from it at any time. Such discretionary authority engenders a degree of risk to both Innovative and to this Commission that any change in the scope and scale of Wireless World's commitment to the Virgin Islands will result in unrecoverable investment by Innovative that must be addressed directly by this Commission in the form of a request for rate relief.

World failed to convincingly show that its proposal will not result in an increase in local service rates and a decline in subscribership in the Virgin Islands. This conclusion represents partial fulfillment of the requirements specified in 47 U.S.C. § 252(f)(1)(B) for removing the rural exemption.

## **X. Findings of Fact**

### **a. Failure to Negotiate in Good Faith**

1. Innovative Telephone Company has a statutory duty under 47 U.S.C. §251(a) to provide interconnection with any telecommunications carrier that presents it with a bona fide Request for Interconnection
2. Innovative Telephone Company meets the statutory definition of a rural telephone company contained in 47 U.S.C. § 153(37)
3. The current designation of Innovative Telephone Company as a rural telephone company is not of issue in this proceeding
4. Innovative Telephone Company is expressly exempted from meeting certain obligations of local exchange carriers contained in 47 U.S.C. §251(c) by virtue of its designation as a rural telephone company
5. Innovative Telephone Company and Wireless World, L.L.C. have a common duty to negotiate interconnection arrangements, terms and conditions under provisions set forth in 47 U.S.C. § 252(a)
6. Innovative Telephone Company has negotiated or arbitrated interconnection agreements with six(6) wireless telecommunications services providers serving the United States Virgin Islands
7. Innovative Telephone Company has not negotiated or arbitrated interconnection agreement that makes provision for local exchange service
8. Wireless World, L.L.C. is a telecommunications carrier and as such is entitled to seek interconnection from Innovative Telephone Company under the terms and conditions set forth in 47 U.S.C. § 251 and 47 U.S. C. § 252.
9. Wireless World, L.L.C. is entitled under 47 U.S.C. § 251(a) to request Innovative Telephone Company to provide interconnection in a manner that permits it to do business as a competitive local exchange carrier in the United States Virgin Islands
10. Wireless World, L.L.C. acquired certain properties, operating rights and licenses of Ackley Enterprises in the United States Virgin Islands in consequence of a limited asset sale
11. The acquisition of those properties, rights and licenses from Ackley Enterprises did not provide for any assumption by Wireless World, L.L.C. of the Request for Interconnection previously filed on December 22, 1998 with Innovative Telephone by Ackley.
12. Ackley Enterprises and Wireless World, L.L.C. have collectively filed three separate Requests for Interconnection with Innovative Telephone on December 22, 1998, December 20, 1999 and August 24, 2000

13. Wireless World, L.L.C. filed a copy of its August 24, 2000 Request for Interconnection with the Virgin Islands Public Services Commission.
14. Wireless World, L.L.C. did not formally rescind its December 20, 1999 Request for Interconnection with Innovative Telephone at any time prior to-, coincident with-, or following its second Request for Interconnection of August 24, 2000
15. Innovative Telephone accepted receipt of the August 24, 2000 Request for Interconnection and subsequently concluded a non-disclosure agreement governing negotiations between the two parties
16. Negotiations between Wireless World, L.L.C. and Innovative Telephone Company produced no formal agreement on terms and conditions associated with any interconnection issue
17. Arbitration by the Virgin Islands Public Services Commission has been employed twice in matters of interconnection involving Innovative Telephone Company
18. The Federal Communications Commission has not issued rules or regulations governing the conduct of negotiations between an ILEC and a CLEC
19. Wireless World, L.L.C. filed a Petition for Arbitration with the Virgin Islands Public Services Commission on February 2, 2001
20. The decision to terminate negotiations between Wireless World, L.L.C. and Innovative Telephone – and employ, instead, arbitration procedures under 47 U.S.C. § 252(b) was made by Wireless World, L.L.C. without concurrence from Innovative Telephone Company

**b. Removal of the Rural Exemption**

1. Innovative Telephone Company maintains a statutory duty under 47 U.S.C. § 251(a) to provide interconnection with any telecommunications carrier that presents it with a bona fide Request for Interconnection.
2. Innovative Telephone Company meets the statutory definition of a rural telephone company.
3. The current classification of Innovative Telephone Company is not of issue in this proceeding.
4. Innovative Telephone Company – as a rural telephone company – is expressly exempted from meeting certain obligations of local exchange carriers contained in 47 U.S.C. §251(c).
5. Innovative Telephone Company is entitled to retain its rural exemption until removed by actions of the Virgin Islands Public Services Commission.
6. As of 1995, 87.8% of Virgin Islands households have telephone service as compared with a national average of 94.6% of all households with telephone service.
7. A party petitioning for removal of the rural telephone company's exemption – in the current instance, Wireless World, L.L.C. – bears the responsibility of showing that doing so would not be unduly

economically burdensome, technically infeasible, or inconsistent with the universal service requirements of 47 U.S.C. § 254.

8. Wireless World, L.L.C. provides wireless voice telecommunications services via a Commercial Mobile Radio Service ("CMRS") license granted by the FCC under 47 U.S.C. § 332.
9. Wireless World, L.L.C. offers video programming via a multipoint, multichannel distribution service ("MMDS") spectrum licensed by the Federal Communications Commission
10. Wireless World, L.L.C. is not currently subject to the authority of the Virgin Islands Public Services Commission for its wireless offerings
11. Wireless World, L.L.C. has not sought -- nor does it hold -- a license from the Virgin Islands Public Services Commission to function as a Community Access Television (CATV) operator in the United States Virgin Islands
12. Wireless World, L.L.C. makes no use of the public rights-of-way in the delivery of its video program material
13. Wireless World, L.L.C. does not operate a cable system per 47 U.S.C. § 522(7).
14. Wireless World, L.L.C. does not satisfy the statutory requirements for consideration as a cable operator
15. The Virgin Islands ranks substantially below the national average for household penetration of telephone service
16. Innovative Telephone Company continues to experience a growth in access lines
17. Innovative Telephone Company satisfies all the statutory requirements for classification as a rural telephone company
18. The Virgin Islands Public Services Commission employs rate-of-return as the basis for evaluating the financial performance of Innovative Telephone Company
19. Wireless World, L.L.C. does not currently qualify as an Eligible Telecommunications Carrier ("ETC"); accordingly, Wireless World is not eligible for participation in the federal Universal Service Fund
20. Wireless World, L.L.C. is not precluded from seeking ETC status from the Virgin Islands Public Services Commission upon conclusion of an interconnection agreement with Innovative Telephone
21. Wireless World, L.L.C. proposed a resale discount rate of 35% off Innovative's current retail rates
22. Innovative Telephone Company employs standardized commercial telecommunications technology in its network
23. Wireless World, L.L.C. has indicated its intent to engage in both resale and facilities-based competition
24. Universal Service Funding for rural telephone companies is currently under review at the federal level
25. Wireless World, L.L.C. cannot enter into the wireline local exchange services market in the United States Virgin Islands without reaching an interconnection agreement with Innovative Telephone

26. The rural exemption provided to Innovative Telephone by 47 U.S.C. § 251(f)(1) does not limit the authority afforded to the Virgin Islands Public Services Commission to regulate the affairs of Innovative Telephone
27. Innovative Telephone Company is legally entitled to establish rates and charges for changes and modifications to its network incurred as a consequence of complying with the requirements of 47 U.S.C. § 251.
28. Any rates and charges proposed by Innovative Telephone for changes and modifications to accommodate the requirements of 47 U.S.C. § 251 require the review and approval of the Virgin Islands Public Services Commission

## **XI. Conclusions**

### **1. Failure to Negotiate in Good Faith**

- I. The August 24, 2000 Request for Interconnection by Wireless World, L.L.C. constitutes a bona fide request for interconnection with Innovative Telephone Company
- II. Innovative Telephone recognizes Wireless World, L.L.C. as a telecommunications carrier eligible to request interconnection under 47 U.S.C. § 252.
- III. Innovative Telephone accepted the August 24, 2000 request for interconnection by Wireless World, L.L.C. as a bona fide request at the time of its submission.
- IV. Innovative Telephone used the August 24, 2000 request for interconnection as a basis for negotiations with Wireless World until it filed for a Motion to Dismiss in January, 2001.
- V. The request by Wireless World, L.L.C. of Innovative Telephone to voluntarily waive its exemption rights as rural telephone company does not represent a violation of any expressed provision of 47 U.S.C. § 251 or 47 U.S.C. § 252.
- VI. The request by Wireless World, L.L.C. of Innovative Telephone to waive its exemption rights as a condition for further negotiating terms and conditions of interconnection does not constitute coercion or an unreasonable demand.
- VII. Innovative Telephone Company is not obligated to waive the exemption rights provided it by 47 U.S.C. § 251(f)(1) as a rural telephone company as a condition to conduct negotiations with a CLEC
- VIII. Innovative Telephone Company is not statutorily prohibited, expressly or otherwise, from waiving (in part or in total) its exemption rights as a rural telephone company if it deems it appropriate to do
- IX. The failure by Wireless World, L.L.C. to formally notify Innovative Telephone of its intention to suspend or conclude negotiations does not constitute a violation of any duties and/or obligations of the parties to negotiate in good faith



- X. Wireless World, L.L.C. is not a successor entity to Ackley Enterprises and, therefore, holds no legal responsibility for the Request for Interconnection previously initiated by Ackley Enterprises on December 22, 1998
- XI. The December 22, 1998 Request for Interconnection filed by Ackley Enterprises cannot be considered a bona fide request for interconnection by virtue of the fact that Ackley Enterprises is no longer a telecommunications carrier and thus no longer entitled to seek interconnection under 47 U.S.C. § 252.
- XII. The mere failure to reach a mutually agreeable settlement between Innovative Telephone and Wireless World does not constitute a breach of any requirement to negotiate in good faith. Congress envisioned this possibility and provided for mediation and arbitration in 47 U.S.C. § 252(a)(2) and 47 U.S.C. § 252(b)(1)
- XIII. The Petition for Arbitration filed by Wireless World, L.L.C. with the Virgin Islands Public Services Commission was necessary to preserve its limited rights under 47 U.S.C. § 252(b)(1)
- XIV. The decision by Wireless World, L.L.C. to terminate negotiations with Innovative Telephone and employ arbitration by the Virgin Islands Public Services Commission is within its right as the only party that can assume responsibility for initiating such discussions under 47 U.S.C. § 252(a)(1)

**1. Removal of the Rural Exemption**

- I. Wireless World, L.L.C. does not satisfy the basic statutory requirements to be deemed a cable operator for purposes of invoking the exception contained in 47 U.S.C. § 251(f)(1)(C).
- II. Wireless World, L.L.C. satisfies the basic statutory requirements to be deemed a Competitive Local Exchange Carrier for purposes of exercising its rights under 47 U.S.C. § 251 and 47 U.S.C. § 252
- III. Innovative Telephone Company satisfies the basic statutory requirements to be deemed a Rural Telephone Company as defined in 47 U.S.C. § 153(37)
- IV. The relative size of a rural telephone company cannot be a consideration in any determination by the Virgin Islands Public Services Commission of whether the exemption provided in 47 U.S.C. § 251(f)(1) should be removed
- V. The rules governing Universal Service Funding for rural telephone companies are currently under review and changes under consideration present the possibility that USF funding levels to the Virgin Islands will be impacted
- VI. Innovative Telephone Company will incur costs to comply with the requirements of The Telecommunications Act of 1996 that will not be avoided by virtue of being designated a rural telecommunications carrier and cannot be deemed unduly burdensome or onerous
- VII. The range of services and support set forth by Wireless World, L.L.C. in this proceeding as essential to competing in the local exchange

services market are sufficiently comparable to those sought by -- and provided to -- other CLECs by Incumbent Local Exchange Carriers that fulfillment of Wireless World's request is technically feasible

VIII. Wireless World, L.L.C. represents a party whose interest in achieving broader basis participation in the Virgin Islands telecommunications market merits serious consideration by Innovative Telephone

IX. Any decision to retain or remove the rural exemption provided Innovative Telephone has no effect upon the ability or means of the Virgin Islands Public Services Commission to effectively regulate the affairs of Innovative Telephone

X. Wireless World, L.L.C. will be immediately subject to the authority of the Virgin Islands Public Services Commission immediately upon approval of any interconnection agreement between Innovative Telephone Company and itself.

XI. A removal of the exemption afforded Innovative Telephone in 47 U.S.C. § 251(f)(1) provides an unconditional right to the services set forth in 47 U.S.C. § 251(c) that cannot be abridged or limited by any actions of the Virgin Islands Public Services Commission even if it were in the best interests of the public to do so

XII. Subscribership to local exchange telephone service in the Virgin Islands is below the national average and nothing presented in this proceeding suggests that it will not remain below the national average for the foreseeable future.

XIII. The Virgin Islands Public Services Commission is required by law to give formal consideration to any request by Innovative Telephone for rate rebalancing and/or rate relief that can be shown to be necessary to accommodate competition

XIV. An increase in the approved price of residential local exchange service will directly challenge the ability of the Virgin Islands Public Services Commission to increase local exchange subscribership in the Virgin Islands

XV. A decision by the Virgin Islands Public Services Commission to retain the rural exchange exemption afforded Innovative Telephone in 47 U.S.C. § 251(f)(1) would not, harm or impede the current business pursuits of Wireless World, L.L.C.

XVI. It is not readily evident that removing the rural exemption afforded Innovative in 47 U.S.C. § 251(f)(1) will not impact upon the ability of the Virgin Islands Public Services Commission to pursue the goals of Universal Service set forth in 47 U.S.C. § 254.

XVII. Costs incurred by Innovative Telephone for compliance with changes to Part 47 of the United States Code are eligible for recovery from CLECs and subscribers but recovery is not guaranteed

XVIII. The Virgin Islands Public Service Commission is under no legal or regulatory obligation to provide anyone the means to perform "bundling" or achieve "one-stop shopping"

XIX. The rural exemption afforded Innovative Telephone in 47 U.S.C. § 251(f)(1) does not prevent Wireless World, L.L.C. from participating in the Virgin Islands telecommunications

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market but it does deny it a specific means of entry that reduces the financial cost -- and risk -- of participation in the telecommunications market.

Dated: May 22, 2001

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FREDERICK G. WATTS  
Hearing Examiner